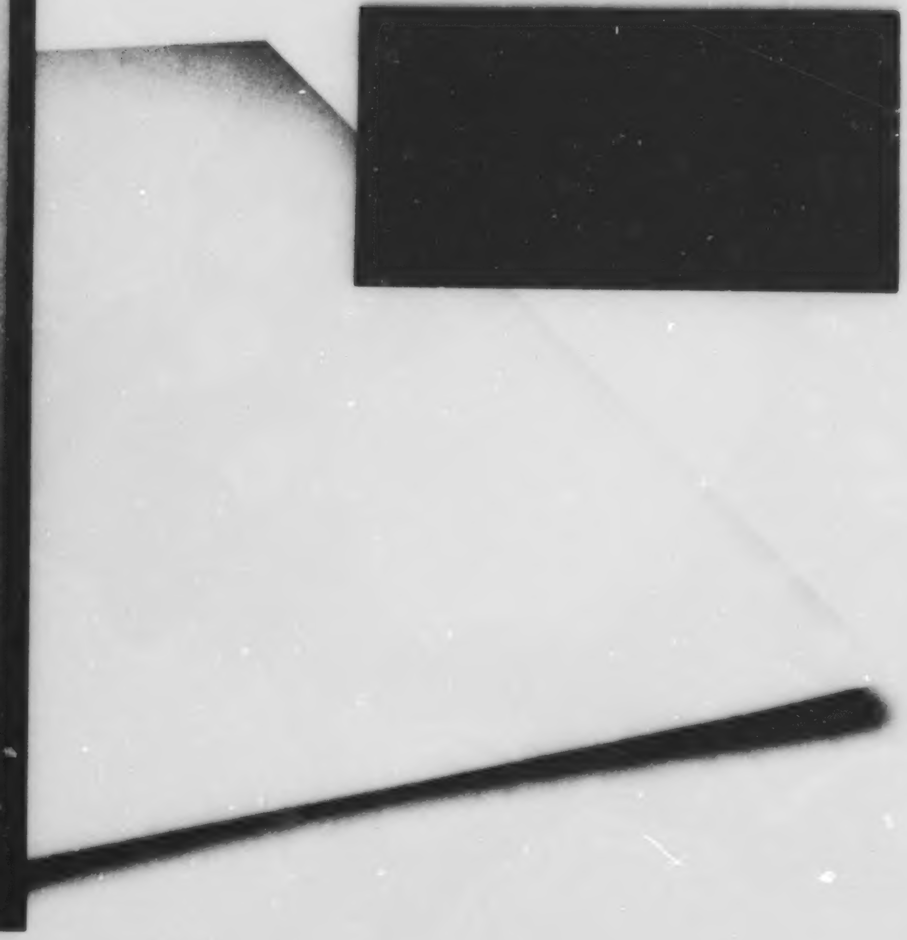
Ombudsman

National Defence and Canadian Forces
Défense nationale et Forces canadiennes

Report to the Minister of National Defence

André Marin **Ombudsman**



Pursuant to the Ministerial Directives, June 1999.

Canada

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Final Report

ALLEGATIONS AGAINST THE CANADIAN FORCES

COMPLAINANT: CAPTAIN BRUCE POULIN

Final Report

Allegations against the Canadian Forces

PART ONE:
Allegations contained in the July 1996 memoranda and the chain of command's response

PART TWO:
Canadian Forces National Investigation Service investigations into the events outlined in the July 9 memorandum and Lieutenant-General Leach's failure to respond

PART THREE:
Harassment, retaliation and reprisal within Public Affairs at National Defence Headquarters

PART FOUR:
Other allegations of retaliation and reprisal

Complainant: Captain Bruce Poulin

Table of contents

Executive summary xi

Introduction 1
  Background to complaint 1
  Referral of complaint to the Ombudsman's Office 1
  Summary of complaint 3
  Investigative process 8

PART ONE: Allegations contained in the July 1996 memoranda and the chain of command's response 13

A. Allegations against Lieutenant-General William Leach 13
  Allegation 1 14
  Assessment 17
  Ombudsman's recommendations 19
  Allegation 2 22
  Assessment 23
  Allegation 3 24
  Assessment 25

B. Allegations against General Maurice Baril, the Chief of the Defence Staff 26
  Allegation 1 26
  Assessment 28
  Ombudsman's recommendation 33
  Allegation 2 34

PART TWO: Canadian Forces National Investigation Service investigations into the events outlined in the July 9 memorandum and Lieutenant-General Leach's failure to respond 35

C. Allegations against Captain Bud Garrick 36
  Allegation 1 37
  Assessment 39
  Allegation 2 40
  Assessment 42
  Allegation 3 43
  Assessment 45
  Allegation 4 45
  Assessment 46

D. Allegation against Master Warrant Officer Peter MacFarlane 46
  Allegation 47
  Assessment 49

E. Allegation against Colonel Serge Labbé 49
  Allegation 50
  Assessment 52

F. Allegations against Commander Stephen Moore 53
  Allegation 1 54
  Assessment 58
  Allegation 2 58
  Assessment 59
  Allegation 3 59
  Assessment 62
  Allegation 4 63
  Assessment 64
  Allegation 5 65
  Assessment 66
  Allegation 6 66
  Assessment 68
  Ombudsman's recommendation 69

G. Allegations against Lieutenant-Colonel Paul Cloutier 69
  Allegation 1 72
  Assessment 74
  Allegation 2 75
  Assessment 76
  Allegation 3 77
  Assessment 79
  Ombudsman's recommendation 81
  Allegation 4 82
  Assessment 85

H. Allegations against Brigadier-General Patricia Samson 85
  Allegation 1 86
  Assessment 88
  Ombudsman's recommendations 92
  Allegation 2 96
  Assessment 96
  Allegation 3 97
  Assessment 101

Ombudsman's recommendation 103

I. Allegation against Captain Alain Bissonnette 104

J. Allegation against Brigadier-General Charles Lemieux .. 104
Assessment 106

K. Allegation against Lieutenant-Colonel Pierre Pellicano . 106
Allegation 106
Assessment 109

PART THREE: Harassment, retaliation and reprisal within Public Affairs at National Defence Headquarters 111
Summary of assessment of findings to allegations of harassment, retaliation and reprisal against members of Media Liaison Office within National Defence Headquarters 111

A. Allegations against Lieutenant-Commander Denise LaViolette 114
Allegation 1 114
Assessment 117
Allegation 2 118
Assessment 119
Allegation 3 120
Assessment 121
Allegation 4 122
Assessment 124
Allegation 5 125
Assessment 126
Allegation 6 126
Assessment 127
Allegation 7 127
Assessment 128
Allegation 8 128
Assessment 130
Allegation 9 131
Assessment 133
Allegation 10 134
Assessment 137
Allegation 11 138
Assessment 139
Allegation 12 140

Assessment 143
Allegation 13 143
Assessment 145
Allegation 14 145
Assessment 148

B. Allegations against Colonel (Retired) R. Coleman 148
Allegation 1 149
Assessment 152
Allegation 2 153

C. Allegation against Captain (Navy) Barry Frewer 155
Allegation 155
Assessment 158

D. Allegation against Captain Jean Morissette 159
Allegation 159
Assessment 161

E. Allegation against Captain (Retired) Andrew Pope 162
Allegation 162
Assessment 164

F. Allegation against Ms. Maureen Bruyere 165
Allegation 165
Assessment 167

Conclusion 168

PART FOUR: Other allegations of retaliation and reprisal 169

A. Allegation against Lieutenant-Commander Ed King 169
Allegation 169
Assessment 171

B. Allegation against Major George Mackie 172
Allegation 172
Assessment 175

C. Allegation against Lieutenant-Colonel Alexander F. Robertson 175
Allegation 175
Assessment 178
Compensation for amount spent on legal fees 178

Ombudsman's recommendation 179
Lieutenant-Colonel Robertson's personnel file 179
Ombudsman's recommendation 180

D. Allegations against Colonel Paul Maillet 180
Allegation 1 180
Assessment 185
Allegation 2 186
Assessment 188

E. Allegations against Major-General Keith Penney 189
Allegation 1 189
Allegation 2 189
Assessment 195
Allegation 3 196
Assessment 198

F. Allegation against Lieutenant-Colonel Miville Deschênes 198
Allegation 199
Assessment 201

G. Allegation against Brigadier-General Lise Mathieu 203
Allegation 203
Assessment 205

Recommendations and conclusion 207
Summary of recommendations 207
Conclusion 209

Appendix I: Memorandum from Captain Bruce Poulin, July 9, 1996 213

Appendix II: Memorandum from Captain Bruce Poulin, July 15, 1996 217

Appendix III: Written statement of Major Michel Lavoie, July 10, 1998 227

Appendix IV: Memorandum from Lieutenant-General William Leach, June 17, 1998 231

Appendix V: CFNIS press release, October 26, 1998 243

Appendix VI: Index of responses from subjects of complaint 247

The Privacy Act

It is the policy of the National Defence/Canadian Forces Ombudsman to conduct investigations in private. Names are avoided in the Ombudsman's public reports where their use would disclose personal information about individuals. Despite these precautions, privacy cannot be absolutely guaranteed. Some people will know the identities of people referred to because they know their positions and titles, or are familiar with the circumstances of a matter investigated by the Ombudsman.

This case is different. The facts and issues involved are well known to the public through media articles and public statements — many by the complainant himself. From the outset, the investigation was undertaken on the understanding that the Ombudsman's final report to the Minister would be made public.

To ensure that the privacy rights of individuals investigated and reported on are respected, the Ombudsman's staff contacted all of the people subject to investigation, to let them know that the report would soon be made available to the public with their names in it, in conjunction with personal information about them. The overwhelming majority wanted their names left intact in the report.

Three names in the report are pseudonyms[*] — where the individuals in question preferred not to have their name published. We are satisfied that the integrity of the report is in no way compromised by the use of these pseudonyms. Other named individuals who provided factual information did so in the course of their duties, and this information did not constitute personal information about them.

Our consultations delayed the publication of the final report by a few weeks, but we believe our concerns about privacy were worth the extra time. During the consultations we notified the Privacy Commissioner of Canada of our intention to publish the report, gave him a copy, and explained our assessment of the strong public interest in this case which justified the approach we were taking to disclosure. The Privacy Commissioner's Office offered a number of suggestions, all of which we followed, to reduce the likelihood of disclosing personal information not germane to the report.

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[*] Ed King, Maureen Bruyere, George Mackie

Executive summary

Facts

The Ombudsman's Office conducted an investigation into complaints by Captain Bruce Poulin that he was the target of harassment, retaliation and reprisal. The complaints were referred to the Ombudsman's Office at the request of the Chief of Review Services, Department of National Defence (DND), after internal DND and Canadian Forces (CF) mechanisms had been unable to resolve various aspects of this matter, and in recognition of the need for an independent investigation by an objective third party outside the CF chain of command.

Captain Poulin is a CF member currently serving on staff within the Director General Public Affairs (DGPA) at National Defence Headquarters. On July 9, 1996, he submitted a memorandum containing allegations of inappropriate behaviour on the part of Colonel Serge Labbé to the Deputy Commander of Land Forces, then Major-General William Leach.

After Captain Poulin's memorandum became public during a press conference on June 17, 1998, Canadian Forces National Investigation Service (CFNIS) investigations were initiated into Colonel Labbé's alleged misconduct and Lieutenant-General Leach's alleged failure to respond to or act on the memorandum. The CFNIS found no evidence to support laying charges against Colonel Labbé and insufficient evidence to warrant charges against Lieutenant-General Leach; however, it did recommend that the chain of command review the matter from an administrative perspective.

Captain Poulin claimed that, after the memorandum was made public, he became the target of retaliation and reprisals, suffered adverse career consequences and was alienated from the CF community in which he works and lives; furthermore, he and his family experienced severe stress.

Internal DND and CF mechanisms were unable to resolve Captain Poulin's concerns. Efforts were made to resolve the dispute by referring it variously to the CFNIS, the military police complaints process, the Executive Director of Conflict Management, the redress of grievance process and the Chief of Review Services. Indeed, efforts to employ these processes led to further complaints by Captain Poulin.

The complaint submitted to the Ombudsman's Office consisted of four volumes of documentation, comprising 95 allegations against 24 individuals, including senior DND and CF leaders and managers. This investigation has been the largest completed by the Ombudsman's Office to date, taking approximately 22 months to complete and including more than 100 interviews of 85 different witnesses across Canada and abroad. It required review of more than 2,000 pages of interview transcripts and thousands of pages of records.

In keeping with the Ombudsman's role, the investigation was not conducted with a view to determining whether sufficient evidence existed to warrant charges under any act or regulation but focused specifically on whether the complainant in this matter, Captain Poulin, was treated fairly and equitably by DND and the CF.

The Ombudsman experienced excellent cooperation from most current and former personnel of DND and the CF contacted during the investigation. However, in some instances, both subjects and witnesses expressed a reluctance to share information because documents produced by the Ombudsman's Office during its investigation can be accessed under the *Access to Information Act*.

On March 5, 2001, the Ombudsman's interim report and recommendations were provided to Captain Poulin, to the subjects of the complaints and to the Canadian Forces Provost Marshal (CFPM) to permit their comments on the portions relevant to them. Upon careful review of all feedback received, clarifications and amendments were made where warranted, and the Ombudsman's final report was produced and submitted to the Minister of National Defence on May 11, 2001.

Findings

1. Despite Lieutenant-General Leach's assertion that he did not recall having seen Captain Poulin's memorandum of July 9, 1996 regarding inappropriate conduct by Colonel Labbé, evidence provided by members of Lieutenant-General Leach's staff at the time revealed that the memorandum had been placed in his office and the matter brought to his attention on more than one occasion. Based on the evidence collected, the Ombudsman found that "it is highly unlikely Captain Poulin's July 9, 1996 memorandum containing allegations of misconduct against Colonel Labbé went unseen by Lieutenant-General Leach."

As a result of his findings, the Ombudsman made recommendations to ensure that current procedures are improved so that complaints brought forward to the CF chain of command are acknowledged, investigated and responded to in a timely manner. The Ombudsman recommended:

- the routine logging and monitoring of correspondence;
- written acknowledgement of complaints and a written response detailing any action taken, including the results of investigations;
- if no written response or follow-up action is logged, the matter be brought immediately to the attention of the officer who is the immediate supervisor of the member who failed to log or follow up the complaint; and
- if complaints are not dealt with promptly, the matter be referred to the Ombudsman's Office for review.

The Chief of the Defence Staff was receptive to the Ombudsman's recommendations and has undertaken "that current guidance be reviewed and that direction with respect to the management of recorded information be strengthened, where appropriate."

The Ombudsman found that, had his complaints to Lieutenant-General Leach received prompt and fair attention, Captain Poulin would not have embarked on what has proven to be a five-year period of frustration and anxiety for many of those involved, most of all for him and his family. The Ombudsman concluded, "This should not have happened and his [Captain Poulin's] experience underlies the importance of truly respecting the rights of CF members to voice concerns and seek remedies when they perceive injustices or problems. Only when complaints are taken seriously will real problems be discovered and rectified and misperceptions corrected."

The Ombudsman stated, "In my view, the system failed Captain Poulin. It did so by failing to take prompt notice of the ethical concerns he raised in his July 9, 1996 memorandum." He also concluded that General Maurice Baril's response to the CFNIS recommendation to review the matter from an administrative perspective was inadequate and "contributed further to Captain Poulin's perception that the chain of command had again failed to acknowledge any wrongdoing and take corrective measures."

Drawing on examples from the Australian Defence Force, the Ombudsman recommended that "General Baril should, as the commander of the Canadian Forces personnel, issue an acknowledgement of failure and regret on behalf of the chain of command to Captain Poulin and confirm to him personally the Canadian Forces' commitment to implementing procedures to ensure that when members bring forward issues and concerns to the chain of command they will be responded to in all cases."

In response to this recommendation, the Chief of the Defence Staff wrote, "I deeply regret the breakdown in communication and the fact that both he [Captain Poulin] and his family suffered undue stress and anxiety as a result." The Chief of the Defence Staff accepted the Ombudsman's recommendation and wrote personally to Captain Poulin expressing his "personal regret that the Chain of Command was not able to address [Captain Poulin's] concerns early on" and acknowledging the unfortunate impact that this has had on Captain Poulin and his family. He also invited Captain Poulin to meet with him to discuss the way forward. Captain Poulin responded to the Chief of the Defence Staff on April 20, 2001 accepting his "unreserved expression of regret."

The Chief of the Defence Staff also endorsed the Ombudsman's recommendation that Captain Poulin be reimbursed for certain legal expenses that he incurred. These costs were expended when Captain Poulin sought legal advice in relation to a private letter to Colonel Labbé which had become public. The letter, written on CF regimental letterhead by a senior officer, expressed support for Colonel Labbé and made disparaging comments about Captain Poulin and his motivation in bringing forward his complaint.

2. Although the Ombudsman was not satisfied that the CFNIS investigation was inadequate, he found that there was inappropriate contact between the Chief of the Land Staff, who was then under investigation, and the CFPM. He also found that the Military Police should not have called Captain Poulin's complaint "vexatious." Furthermore, the Ombudsman found the CFNIS press release announcing the results of the investigation into allegations against Lieutenant-General Leach was misleading in at least three material respects.

In his review of the CFNIS investigation into the allegations of misconduct against Colonel Labbé, the Ombudsman found that there was no basis to conclude that the investigation was inadequate or that relevant witnesses had not been interviewed. With respect to the allegations against Lieutenant-General Leach for failing to act on Captain Poulin's memorandum, the Ombudsman noted that a different standard is applied by a police agency in determining whether sufficient evidence exists to warrant laying charges, and that it was beyond the mandate of the Ombudsman's Office to review police charge-laying discretion.

The Ombudsman also found that CFNIS investigators acted appropriately in not investigating other issues Captain Poulin raised during the course of their investigations. With respect to Captain Poulin's allegations that false information had been leaked to the media in an attempt to discredit him after his memorandum became public, the Ombudsman recommended that the CFNIS provide Captain Poulin with a formal, written explanation that they did not investigate this complaint because it fell outside their jurisdiction. As a follow-up to this recommendation, although an initial review by the Ombudsman's Office did not disclose evidence that Captain Poulin's personal information had been leaked, the Ombudsman directed his investigators to meet with Captain Poulin to explore whether he wished the Ombudsman's Office to further pursue this portion of his complaint in light of the findings contained in the final report.

The Ombudsman did not find the decision by the Deputy Provost Marshal Professional Standards to dismiss Captain Poulin's military police complaints was unreasonable in the circumstances. He did, however, conclude that, while the use of the term "vexatious" in dismissing Captain Poulin's complaints may have been technically correct according to military police policies, it was "inflammatory and counterproductive" in these circumstances. The Ombudsman recommended that the letter indicating that Captain Poulin's military police complaints were unsubstantiated be rewritten to remove the term "vexatious."

The Ombudsman further concluded that a hand-written memorandum Lieutenant-General Leach submitted to the CFPM, then Colonel Patricia Samson, at the commencement of the CFNIS investigations did not influence or alter the terms of the investigations. He found nothing to suggest that Lieutenant-General Leach, then the Chief of the Land Staff, was attempting to interfere improperly in the CFNIS investigation in which he was implicated or that Brigadier-General Samson was personally vulnerable to undue influence.

However, the Ombudsman did conclude that the memorandum by Lieutenant-General Leach, which contained his personal version of events as well as descriptions of incidents in which he claimed to have assisted Captain Poulin, was inappropriate and created the perception that there was an attempt to improperly influence an independent CFNIS investigation. The Ombudsman commented that such perceptions serve to undermine public confidence in the CF and erode members' trust in leaders. He further expressed the view that it is unlikely that Lieutenant-General Leach would have written such a memorandum if directives from the Chief of the Defence Staff had been in place to discourage such actions.

The Ombudsman noted that, while it is the role of the Military Police Complaints Commission to deal with specific complaints of interference in particular military police investigations, there is nothing in the Accountability Framework for the CFPM and the Vice Chief of the Defence Staff to prevent the implementation of general policy directives and guidelines from the Chief of the Defence Staff. In fact, the Accountability Framework expressly confers upon the Vice Chief of the Defence Staff the responsibility to provide "education and training to the chain of command and the members of the military police to assist in understanding their respective roles." In keeping with the Accountability Framework, the Ombudsman specifically recommended that the Chief of the Defence Staff ensure that appropriate directives are put in place to:

- prevent actions by CF members that constitute, or may be perceived by a reasonable person to constitute, attempts to influence the course of military police investigations outside of the normal investigative process, and
- ensure that, where incidents are referred to the CFPM for investigation, the referral comes from persons within the chain of command who are not identified as potential subjects of any allegations to be investigated.

He also concluded that the CFNIS press release that announced the results of the CFNIS investigations, entitled "CFNIS finds no evidence to support allegations against Colonel Labbé and Lieutenant-General Leach," was misleading in at least three material respects. The Ombudsman accepted the explanation of the former CFPM that there was no intention to mislead. He did, however, conclude that, as a result of the misleading effect of the press release, it appeared "as though Captain Poulin had brought a largely groundless complaint against a superior officer, when such a conclusion was not the finding of the investigation." He commented that "tremendous care must be employed not to release public statements that can be misinterpreted as spin-doctoring, whether due to inexactitude, over-simplistic headlines, the ambiguous employment of technical concepts such as 'chain of command' or failure to include all information needed to form an accurate impression." He noted that, when this happens, "The first casuality is the reputation of the CF for openness and transparency; furthermore, the real credit for a job well done is not received." The second casualty is the "little" person, as happened in this instance, when "this press release left the impression that

Captain Poulin's complaint had been found to be groundless, when it had not been so determined." The Ombudsman recommended that the CFNIS:

- issue a further press release to inform the public of the complete results of its investigation into the allegations against Lieutenant-General Leach, including the fact that evidence was uncovered that other individuals within Lieutenant-General Leach's office had seen the memorandum submitted by Captain Poulin in July 1996 and were aware of its contents. The press release should also include the Canadian Forces National Investigation Service recommendation that the matter be reviewed from an administrative perspective by the chain of command.

The Ombudsman stated that he was "disappointed and disheartened" by the current CFPM's response to the recommendations in the interim report. He expressed concern that "objections based on jurisdictional grounds detract from the substance of the issues and needlessly undermine the benefits that specific recommendations can accomplish." The Ombudsman strongly encouraged the CFPM to view his recommendations substantively and expressed hope "that the CFPM will accept this opportunity to help remedy the instances of maladministration and unfairness that this Office has identified, and will come to view its contributions in the area of Military Police and the military police complaints process as a positive thing."

3. The Ombudsman did not find that acts of reprisals and retaliation were committed against Captain Poulin.

The Ombudsman concluded that neither Captain Poulin's immediate supervisors and peers nor those involved in attempts to resolve his complaints abused their authority or engaged in behaviour designed to retaliate against him. Rather, the Ombudsman found that an ongoing conflict in the workplace that predated the public release of Captain Poulin's memorandum was exacerbated by Captain Poulin's lack of faith in the system after his complaints to Lieutenant-General Leach went unacknowledged.

The Ombudsman also commented that, given the amount of media interest in the ongoing CFNIS investigations, Captain Poulin's activities may have been monitored more closely at times than those of his peers; however, the actions of Captain Poulin's supervisors did not constitute an abuse of authority nor were they intended as a form of retaliation.

The Ombudsman stated, "I view the ongoing stress and tension Captain Poulin suffered during this time and his feelings that he was being targeted and subjected to retaliation as directly related to the fact that serious allegations he had brought forward to the chain of command in 1996 had not been acknowledged or responded to."

The Ombudsman commented, "Many people became implicated in the long ordeal that began with Captain Poulin's effort, on July 9, 1996 and again on July 15, 1996, to speak out on matters sufficiently important that he took the personal risks that reporting superior officers can entail. Many of those implicated did nothing wrong, undoubtedly contributing to the perception by some that Captain Poulin was a perennial complainer. The process whereby Captain Poulin's reputation was tainted and other persons exposed to the stress of being the subjects of his complaints might well have been prevented had his initial complaints been dealt with judiciously. Instead they languished. They lay dormant until made public nearly two years later, on June 17, 1998, when Captain Poulin's original memorandum of July 9, 1996 was circulated at a press conference. In the interim, Captain Poulin had no doubt come to suspect the worst, that the CF was not interested in his complaints or in addressing injustices, that it was closing ranks to protect its own and avoid public scandal."

Conclusion

The Ombudsman conveyed to the Minister his hope that "we will all learn from what has happened here" and that "this odyssey will come to a close for Captain Poulin and for all of those who have been implicated in this matter." He further expressed his desire that the recommendations which he and his staff have crafted will be implemented and that the Minister will use his good offices to prevail on those who would resist to reconsider their positions and place the best interests of DND and the CF and its members first.

Introduction

Background to complaint

On July 9, 1996, Captain Poulin submitted a memorandum about a matter he believed he was duty-bound to report. The allegations contained in his memorandum were serious and warranted swift action. The matter was not properly handled. Effectively, nothing was done. The failure to respond promptly and effectively to these complaints set off a chain of events that led to the filing of further complaints with various persons and dispute settlement regimes within the Department of National Defence (DND) and the Canadian Forces (CF). Some of these complaints have merit, others do not. But one thing is clear: if the initial complaints had received prompt and fair attention, Captain Poulin would not have embarked on what has proven to be a five-year period of frustration and anxiety for those involved — most of all, for him and his family. If the initial complaints had been dealt with promptly and fairly, Captain Poulin would not have developed such a deep distrust and suspicion of elements of DND and the CF that he perceived many actions or inactions to be wrongful, even when they were not. Captain Poulin's experience irrevocably damaged his chosen career and the quality of his experience as a member of the CF. It undermined his morale and, ultimately, the way others perceive him. As Captain Poulin puts it, "The damage to my career, to my professional reputation and status is now irreversible." This should not have happened and his experience underlies the importance of truly respecting the rights of CF members to voice concerns and seek remedies when they perceive injustices or problems. Only when complaints are taken seriously will real problems be discovered and rectified and misperceptions corrected.

Referral of complaint to the Ombudsman's Office

On July 12, 1999, the Chief of Review Services Major-General Penney met with the Senior Policy Advisor of the Ombudsman's Office to explore the feasibility of this Office conducting an investigation into allegations brought forward by Captain Bruce Poulin. Captain Poulin is a CF member currently serving on staff within the Director General Public Affairs (DGPA), known as Public Affairs, at National Defence Headquarters (NDHQ). Captain Poulin alleges he has been the target of reprisal and retaliation by numerous authorities of DND and the CF ever since a memorandum he wrote, which contained allegations of inappropriate behaviour on the part of Colonel Serge Labbé, became public during a press conference on June 17, 1998. The press conference was presided over by Lieutenant-General William Leach, who was the Chief of the Land Staff in 1998. The memorandum, dated July 9, 1996, had been addressed to Lieutenant-General Leach who at that time was the Deputy Commander of Land Forces and held the rank of Major-General. Then Major-General Leach, as the intended recipient of the memo, is alleged to have failed to take appropriate action in response to the memo.

In 1996, Captain Poulin was a student at the Canadian Land Forces Command and Staff College (CLFCSC), then commanded by Colonel Labbé. Later in 1996, Captain Poulin was a speechwriter for the former Commander of Land Forces, General Maurice Baril, who at that time held the rank of Lieutenant-General — General Baril is currently the Chief of the Defence Staff. In June 1998, Captain Poulin was a public affairs officer employed with the Media Liaison Office at NDHQ.

The referral of his complaint to this Office by the Chief of Review Services followed several attempts to bring closure to various aspects of this matter through internal DND and CF mechanisms. These mechanisms included investigations by the Canadian Forces National Investigation Service (CFNIS), complaints to the Deputy Provost Marshal Professional Standards, proposed mediation through the DND Executive Director of Conflict Management, applications for redress of grievance and finally a proposal for an administrative review to be conducted by a private contractor on behalf of the Chief of Review Services.

The internal responses to these complaints resulted in further allegations against DND and CF authorities, including Captain Poulin's immediate supervisors and managers and those employed to deal with such complaints.

The Chief of Review Services requested that Captain Poulin participate in an investigation headed by an investigator contracted by his office. Captain Poulin maintained that an individual with an existing contractual relationship with DND lacked the necessary independence to render unbiased findings. In response to Captain Poulin's insistence that a completely independent outside body investigate his complaints, the Chief of Review Services approached this Office to ask whether it would accept the case for investigation.

The Ombudsman's Office accepted the case for investigation subject to Captain Poulin's agreement and the agreement by both the Chief of Review Services and Captain Poulin that any further internal investigation of the original and all related complaints be suspended until completion of the investigation by this Office. Captain Poulin faxed this Office on July 21, 1999 to indicate his agreement. In a memorandum to the Chief of Review Services dated July 22, 1999, he further stated that he believed this Office possessed the "required independence and objectivity to examine [his] allegations in an effective way."

Finally, it is not the role of the Ombudsman to conduct criminal investigations or recommend the laying of charges. Rather, the Ombudsman's role is to review matters to provide an assessment as to whether the complainant was treated in a fair and equitable manner. In the original memorandum of June 9, 1996, misconduct allegations are made against Colonel Labbé. It is important to clearly state at the outset that it is not the Ombudsman's function to make any findings on the accuracy of those allegations or to determine whether Colonel Labbé had in fact committed any of the acts he is alleged to have committed. This report has therefore refrained from doing so. However, since the allegations against Colonel Labbé are the subject of the initial complaint by Captain Poulin, they are described to give context to the narrative, so that the nature and seriousness of the complaints, as well as the ensuing events, are understood.

Summary of complaint

Captain Poulin was a student at the CLFCSC College in Kingston, Ontario from January 29 to June 14, 1996. The Commandant of the college was Colonel Serge Labbé.

Upon the conclusion of the course, Captain Poulin returned to his position as a speechwriter for the Commander of Land Forces at army headquarters then in St. Hubert, Québec. After returning to the army headquarters, Captain Poulin submitted a memorandum to then Major-General Leach, the Deputy Commander of Land Forces. Captain Poulin's memorandum dated July 9, 1996 made allegations of inappropriate behaviour against Colonel Labbé.

In his memorandum, Captain Poulin claims to have witnessed Colonel Labbé rubbing the back of a civilian member of the mess dining room staff. Captain Poulin claims he later spoke to this woman, who related that Colonel Labbé had made previous advances toward her. Captain Poulin discussed this information with some of his fellow students who, Captain Poulin contends, provided anecdotes from the mid-1980s alleging that, as battalion commander, Colonel Labbé arranged for transportation to take uniformed officers under his command to a local exotic dancing establishment. Captain Poulin included this information in his memorandum. Lastly, Captain Poulin alleges to have witnessed fellow students drinking alcohol in the presence of Colonel Labbé aboard a CF passenger bus and while waiting in the passenger terminal at CF Base Trenton.

Captain Poulin also submitted a second memorandum, dated July 15, 1996, outlining to Major-General Leach his criticisms of the CLFCSC. In his complaint to the Ombudsman's Office, Captain Poulin states that Lieutenant-General Leach failed to take appropriate action and order an investigation into these concerns.

On June 17, 1998 a press conference took place chaired by the Chief of the Land Staff, Lieutenant-General Leach. During the press conference, retired Colonel Michel Drapeau, then a media representative, asked Lieutenant-General Leach to comment on a memorandum that he and Scott Taylor of *Esprit de Corps* magazine had circulated amongst members of the media during the press conference. Lieutenant-General Leach was the intended recipient of the memorandum, authored by Captain Bruce Poulin and dated July 9, 1996, that contained allegations of inappropriate behaviour on the part of Colonel Serge Labbé. At that time, Lieutenant-General Leach was the Deputy Commander of Land Forces and held the rank of Major-General.

As a result of events at the press conference of June 17, 1998, a military police investigation was ordered to examine the allegations against Colonel Labbé and a second investigation was ordered to examine whether charges were warranted against Lieutenant-General Leach for failing to take action in response to the memorandum. These investigations were conducted by military police investigators from the CFNIS, Central Region.

The CFNIS investigations concluded that the allegations of misconduct against Colonel Labbé could not be substantiated. Further, the CFNIS held that there was insufficient evidence to form the basis of any charges against Lieutenant-General Leach for having seen the memorandum and failed to take action. It did, however, recommend that the chain of command review the issue of Lieutenant-General Leach's lack of response to the memorandum from an administrative perspective. The complaint Captain Poulin submitted to the Ombudsman's Office further objects to the adequacy of the investigations by the CFNIS and the fact that General Maurice Baril, the Chief of the Defence Staff, did not conduct the recommended administrative review or employ appropriate corrective measures.

At the conclusion of the CFNIS investigations, a number of CF authorities provided statements to the media detailing the conclusions. It is further alleged that both the former Head of Public Affairs for Land Forces and a former spokesperson for the CFNIS made false statements to the media concerning the initiation of the investigations and the findings, respectively.

Following the conclusion of the investigations, on November 18, 1998 Captain Poulin submitted four military police complaints against the Canadian Forces Provost Marshal (CFPM) and three of the CFNIS investigators that had investigated the allegations against Colonel Labbé and Lieutenant-General Leach. On November 30, 1998, Captain Poulin submitted a fifth military police complaint against the Deputy Provost Marshal Professional Standards and the CFPM. These complaints were ultimately dismissed by the relevant authorities as "vexatious." Captain Poulin has requested that the Ombudsman's Office review the handling of these complaints as part of its investigation into this matter.

Captain Poulin indicates that, since the time his July 9, 1996 memorandum was made public in June of 1998, he became the subject of repeated incidents of harassment in the workplace. He views these incidents as retaliation and reprisal for his role as author of the memorandum and his subsequent statements to members of the media about his experiences. Captain Poulin also details his concerns and experiences, including his allegations of retaliation and reprisal, in a speech he drafted and submitted in response to a call for submissions for the CF Defence Ethics Conference in October 1998. He also alleges that information related to his involvement in an accident was deliberately leaked to members of the media in order to discredit him.

The persons Captain Poulin views as responsible for the retaliation and reprisal, and for not properly dealing with his complaints internally, comprise 8 of the 24 subjects of the written complaint that Captain Poulin provided to this Office at the commencement of its investigation. This portion of the complaint includes allegations of harassment and abuse of authority against: Lieutenant-Commander D. LaViolette (Captain Poulin's former supervisor and former head of the Media Liaison Office), Colonel (Retired) R. Coleman (former Acting Director General Public Affairs), Captain (Navy) B. Frewer (senior-ranking military public affairs officer), Captain J. Morissette (second-in-command of the Media Liaison Office) and Captain (Retired) A. Pope (Captain Poulin's colleague in the DGPA). Captain Poulin also alleges that his activities and interactions with members of the media were intensely monitored and reported to his chain of command after the July 9, 1996 memorandum was made public. He indicates that, during this time, then Lieutenant E. King prepared Media Response Lines relating to the contents of the July 9, 1996 memorandum that were misleading and inaccurate and refused to amend the lines when so advised by Captain Poulin. Captain Poulin also states that his unit harassment advisor, Ms. Maureen Bruyere, failed to provide him with any support or assistance.

Captain Poulin's complaint further alleges that Major Mackie, Captain Poulin's subsequent supervisor upon his posting from the Media Liaison Office, unfairly caused Captain Poulin to be removed from his staff. Captain Poulin alleges that Major Mackie's actions were in response to a redress of grievance submitted by Captain Poulin objecting to a performance evaluation Major Mackie had submitted on Captain Poulin.

Captain Poulin indicates that, as a result of the treatment he was experiencing, he requested to be moved from the Media Liaison Office in October 1998. Captain Poulin was subsequently posted to the Public Affairs Y2K project under the command of Major Mackie. In March 1999, Captain Poulin was removed from the Y2K Public Affairs section and tasked to the section responsible for daily media briefings in Kosovo. Captain Poulin indicates in his complaint that this move was orchestrated by Major Mackie in retaliation for the redress of grievance Captain Poulin submitted in objection to his performance evaluation.

The speech Captain Poulin sought to present at the October 1998 Defence Ethics Conference did not refer to all of the individuals included in the written complaint that he submitted to this Office. While Captain Poulin's speaking notes did not name any of the individuals alleged to have subjected him to unfair treatment, the CF leaders responsible for the conference felt that the considerable media coverage surrounding the memo, along with the accessibility of organizational information identifying members employed within the DGPA, would likely make these individuals easily identifiable.

Ultimately, the Director of the CF Ethics Program and his immediate superior, the Chief of Review Services, decided it would be inappropriate to allow Captain Poulin to present his speech at the conference. They reasoned that the conference could not serve as a platform to make allegations against individuals. However, the Chief of Review Services, Major-General Penney, maintained that the allegations contained in Captain Poulin's speaking notes warranted investigation. Consequently, Major-General Penney initiated an undertaking with an external investigator to examine Captain Poulin's allegations. The investigator, Mr. Maurice Cantin, had recently been contracted to conduct an unrelated harassment investigation by Special Examinations and Inquiries, a section within the office of the Chief of Review Services.

Captain Poulin maintains that both Colonel Maillet, the Director of the CF Ethics Program and Major-General Penney, the Chief of Review Services, unfairly prevented him from giving his speech at the conference and, further, that Colonel Maillet provided false information to the media regarding the reasons Captain Poulin was not included as a speaker at the conference. Captain Poulin also states that Major Miville Deschênes, who was a senior analyst with the Chief of Review Services, provided false information to Captain Poulin regarding the intention to proceed with an investigation of the allegations contained in his draft speech, despite his reluctance to participate.

Despite considerable dialogue between Captain Poulin and Major-General Penney, Captain Poulin maintained that he could not agree to participate in the investigation if it was to be conducted by an investigator contracted by the Chief of Review Services. Captain Poulin felt the contractual relationship between DND and Mr. Cantin compromised the level of independence required to produce objective and unbiased findings. Despite repeated efforts urging he participate in the investigation, Captain Poulin did not acquiesce and the Chief of Review Services initiated discussions to explore whether the Ombudsman's Office would investigate Captain Poulin's complaint.

In his complaint to this Office, Captain Poulin claims that Major-General Penney attempted to block his attempts to resolve his complaints of harassment and reprisal. He also alleges that Major-General Penney acted improperly in recommending an application for redress of grievance to resolve his complaints, suggesting that Major-General Penney knew the head of the CF Grievance Administration, Lieutenant-Colonel Pellicano, was married to the secretary of the Director General Public Affairs. In addition to this perceived conflict of interest, Captain Poulin also suggests that Lieutenant-Colonel Pellicano would be potentially biased because he was junior in rank to individuals named as subjects of Captain Poulin' s complaints.

To support the complaint submitted to this Office, Captain Poulin furnished many volumes of documents obtained through numerous *Privacy* and *Access to Information* requests. In one package of documents released under the *Privacy Act*, Captain Poulin obtained a letter that Lieutenant-Colonel A. F. Robertson, a former staff member at the CLFCS, had written to Colonel Labbé. The document pledged support for Colonel Labbé while employing rather harsh and unflattering language to describe Captain Poulin and attributed a disreputable motive for Captain Poulin's allegations. When Captain Poulin became aware of this correspondence, he sought legal representation at Crown expense in order to pursue legal action. Captain Poulin was told this matter did not meet the criteria for publicly funded legal representation. As an alternative, Captain Poulin was referred to the Executive Director of Conflict Management.

Captain Poulin subsequently sought to consolidate this mediation with an attempt to mediate his complaints against his chain of command and the CFPM. Consequently, a referral was made to the office of the Chief of the Defence Staff to solicit General Baril's participation in mediation with Captain Poulin. This referral was received by the former Executive Assistant to the Chief of the Defence Staff, Brigadier-General (then Colonel) Lise Mathieu. She concluded that it would be premature to include the Chief of the Defence Staff at that point in time and that attempts ought to be made at a first-line resolution, further down the chain of command. Consequently, mediation was not pursued to resolve any of Captain Poulin's complaints. Captain Poulin objects in his complaint to improper interference by Brigadier-General Mathieu and to the Chief of the Defence Staff's refusal to engage in mediation.

Investigative process

Following preliminary meetings with members of the Ombudsman's staff on September 20, 1999, Captain Poulin had an initial meeting with the lead investigator assigned to this case. Captain Poulin's written complaint was presented as volumes two and three of four volumes. These volumes contained his allegations and substantiating documentation. At the request of the investigator, Captain Poulin provided copies of his hand-written diaries for the period 1996 through 1999. A second investigator was assigned to the case on October 11, 1999 and the Ombudsman's investigators interviewed Captain Poulin on audiotape on October 29, 1999.

Due to the broad scope of Captain Poulin's complaint, it was decided this investigation would be divided into two broad phases. The first phase examined his allegations of harassment and reprisal occurring after June 17, 1998. The second phase focused on a review of the CFNIS investigations into the allegations against Colonel Serge Labbé in Captain Poulin's memorandum dated July 9, 1996 and the alleged inaction by Lieutenant-General William Leach.

The reason for investigating more recent events before earlier ones was two-fold. First, Captain Poulin's allegations of reprisal occurring after June 17, 1998 had not been previously investigated within any other forum. It was decided that this portion should be given precedence because information on events occurring after June 17, 1998 had not been collected during previous investigations. Secondly, the previous investigations by the CFNIS and the subsequent complaints against its investigators and the CFPM required a high volume of material to be compiled for examination. This material comprised documents, notes and reports, plus the audio and video recordings of the CFNIS interviews.

The complaint submitted by Captain Poulin contains 95 allegations against 24 individuals, including serving CF members, retired CF personnel and one civilian employee of DND. These individuals represent Captain Poulin's former and current peers and superiors within the chain of command and members of the Military Police who investigated the initial allegations against Colonel Labbé and Lieutenant-General Leach.

I have addressed the allegations against each individual, provided an assessment of my findings and made recommendations where appropriate. In some cases, allegations are dealt with together; for instance, where they are similar in nature or where the same allegation pertains to a number of individuals.

Where relevant, the exact text of the allegation as articulated by Captain Poulin in his written complaint to my office has been used. In some instances, allegations refer to potential breaches of sections of the Queen's Regulations and Orders (QR&O) or the *National Defence Act*. Although these allegations have been referred to for the purpose of clarity and thoroughness, it should be made clear that, in keeping with the function performed by the Ombudsman's Office, this investigation was not conducted with a view to determining whether sufficient evidence existed to warrant charges under any act or regulation. The review focused specifically on whether the complainant in the matter, Captain Poulin, was treated fairly and equitably.

During this investigation, 100 interviews of 85 individuals were conducted. Interviews were audiotaped with the consent of the persons interviewed. The recorded interviews were transcribed into more than 2,300 pages of transcripts. Prior to interviewing an individual that is a subject of Captain Poulin's complaint, Ombudsman's investigators provided the relevant allegations to the individual and addressed any concerns raised about the mandate of this Office and the confidentiality of the information provided.

In at least one instance, an individual who was on deployment declined to have copies of the allegations sent to him while he was on operation. In order to accommodate him, the interview was conducted on his return to Canada, after he had an opportunity to review related notes and files. In other instances, where the individual was posted abroad, investigators travelled to conduct the interview on location.

I would like, at the outset, to make a few comments relating to the investigative process and the cooperation I received from members of the CF and DND. During the course of the investigation, Ombudsman's investigators encountered some misperceptions that the role of this Office was one of advocacy for the complainant. They assured all individuals that, as investigators of this Office, they were independent and neutral in the investigative process and were not predisposed to findings in favour either of the complainant or of any authority of the CF and DND.

While the investigators reported an excellent degree of cooperation from almost all current and former personnel of the CF and DND, several individuals, including both subjects and witnesses, expressed considerable concern about the accessibility of interview information through *Privacy* and *Access to Information* mechanisms. While aware of their responsibilities under the Defence Administrative Orders and Directives 5047-1 regarding the provision of information to representatives of the Ombudsman's Office, some individuals complied with considerable apprehension. Their reluctance was attributable to their expectation that any information provided might subject them to future complaints or unwelcome media attention.

The time required to fully examine Captain Poulin's complaint far exceeded our normal 60-day target for completion. The active investigation portion of this complaint alone exceeded 14 months, attributable to our effort to be thorough and objective in examining this large, multi-faceted complaint against so many individuals, many of whom have been relocated to positions elsewhere in Canada and abroad.

Understandably, some individuals have expressed concern about the time this Office has taken to investigate this complaint. Some subjects have suggested that, because this investigation is administrative in nature, and does not pertain to laying charges, it ought to have been conducted in a much shorter timeframe. I disagree. In light of the seriousness of the allegations brought forward, it was imperative that quality and thoroughness not be sacrificed to expediency. At the same time, I am sensitive to the stresses that a lengthy investigation imposes upon the complainant, subjects of the complaints and their families.

Upon completion of this Office's investigation, an interim report was prepared containing preliminary findings and recommendations. The subjects of this complaint, as well as the complainant were notified on February 12, 2001 that the investigation was complete and that copies of the relevant portions of my interim report would be provided for their comments as a matter of procedural fairness. On March 5, 2001, copies of the interim report were provided to Captain Poulin and the Chief of the Defence Staff. Each of the subjects of Captain Poulin's complaint received a copy of the sections of the report dealing with the allegations against them. After further consideration, a copy of the report was also provided to the CFPM for a response to the portions relating to the CFNIS.

All parties were requested to provide their responses to the interim report in writing to this Office by March 19; however, in a few instances extensions were accorded due to operational requirements. Captain Poulin was afforded a reciprocal extension. All responses were received by March 28, 2001 and were carefully reviewed. Some clarifications have been made and additional information added to the final report where appropriate. All of the written responses received can be found in their entirety in the Appendices of this final report.

Captain Poulin submitted his written response to the interim report on March 28, 2001. As for other responses, his response was carefully reviewed and clarifications were made to the final report where appropriate. At this Office's request, Captain Poulin also submitted an impact statement detailing the toll these events have taken on him professionally and personally, as well as on his family.

The Chief of the Defence Staff has accepted some of the recommendations contained in the interim report and has taken some actions in response. He has accepted other recommendations with specific undertakings to ensure their implementation. His response to the interim recommendations, as well as other responses, are detailed in this final report. Some recommendations have been amended as a result of these responses.

The acceptance of these findings and recommendations has depended, in part, on the goodwill and open-mindedness of both the complainant and the senior leadership of DND and the CF and on their desire to achieve closure. I am hopeful this report has the necessary components to bring this lengthy matter to a satisfactory conclusion.

PART ONE:
Allegations contained in the July 1996 memoranda and the chain of command's response

A. Allegations against Lieutenant-General William Leach

Lieutenant-General Leach was the intended recipient of Captain Poulin's memorandum dated July 9, 1996 (Appendix I) that contained allegations against Colonel Labbé. At that time, Lieutenant-General Leach was the Deputy Commander of Land Forces and held the rank of Major-General.

Captain Poulin's memorandum of July 9, 1996 stated that Colonel Labbé had made inappropriate advances toward a civilian member of the mess dining room staff. Additionally, Captain Poulin alleged Colonel Labbé did not take action to prevent students from consuming alcohol on a Canadian Forces (CF) passenger bus and inside the air terminal at CF Base Trenton. In his memorandum, Captain Poulin also included information shared with him by other students alleging that, in the mid-1980s, Colonel Labbé had arranged a trip to a local exotic dancing establishment with officers under his command during his time as a battalion commander.

Captain Poulin also submitted a second memorandum dated July 15, 1996 (Appendix II) that criticized the abilities, attitudes and behaviour of many instructors at the Canadian Land Forces Command and Staff College (CLFCSC), including the alleged assault of a student. He also made critical comments on training conventions and course standards.

On June 17, 1998, Captain Poulin's original memorandum dated July 9, 1996 became public at a press conference chaired by Lieutenant-General Leach, who was the Chief of the Land Staff in 1998. During the press conference, members of the media had circulated copies of the memorandum and a media representative, Colonel (Retired) Michel Drapeau, asked Lieutenant-General Leach if he had any comments to make regarding the memorandum that had allegedly been delivered to him.

The investigation by the Canadian Forces National Investigation Service (CFNIS) concluded:

> There is *no evidence* to support criminal or service offence charges against LGEN LEACH; however, this issue should be reviewed from an administrative perspective by the chain of command. (emphasis added)

Captain Poulin maintains that Lieutenant-General Leach had acknowledged his allegations against Colonel Labbé but took no action.

In his response to the relevant portions of the interim report that were forwarded to him, Lieutenant-General (Retired) Leach indicated, "I have nothing to say or add at this point." He also expressed appreciation for the opportunity to review "this part of your work to date."

Allegation 1

Failure to respond to allegations of misconduct by Colonel Labbé in July 9, 1996 memorandum

Captain Poulin states in his written complaint to the Ombudsman's Office:

> On or around July 9, 1996, during my discussions with then Major-General Leach, we discussed my memo dated July 9, 1996 and specifically the behaviour of Col. S. Labbé. His subsequent inaction was in direct violation of QR&O 107.02(1).
>
> It states that: "Where a complaint is made or where there are other reasons to believe that a service offence may have been committed, an investigation should normally be conducted as soon as practical to determine whether there is sufficient grounds to justify the laying of charges."
>
> Lt.-Gen. Leach's inaction in this regard may also be considered a service offence under section 124 of the *National Defence Act* — Negligent performance of duty.

Captain Poulin states that he had a discussion with then Major-General Leach on July 9, 1996 regarding the conduct of Colonel Labbé and that then Major-General Leach invited him to submit a memorandum outlining his allegations. On the same date, Captain Poulin prepared a memorandum addressed to then Major-General Leach that contained the allegations of inappropriate conduct against Colonel Labbé.

The Ombudsman's examination of this allegation focused on the memorandum dated July 9, 1996 and the alleged failure by Lieutenant-General Leach or any other CF authority to respond to the allegations it contained.

The allegation that Lieutenant-General Leach is guilty of a service-related offence is based on the belief that Lieutenant-General Leach received the July 9, 1996 memorandum, was aware of the allegations of misconduct against Colonel Labbé that it contained and failed to order an investigation or otherwise act on the allegations.

The Ombudsman's Office did not find any evidence that any official action was taken or any investigation conducted in response to the alleged misconduct by Colonel Labbé outlined in the July 9, 1996 memorandum until the memorandum was made public on June 17, 1998. After the memorandum was made public, the CFNIS initiated investigations into both the allegations of misconduct against Colonel Labbé and the question of whether Lieutenant-General Leach failed to respond to or act on these allegations. The CFNIS investigation into the alleged inaction by Lieutenant-General Leach concluded on October 26, 1998 and found there was no evidence to support criminal or service-related charges against Lieutenant-General Leach.

In the course of investigating this allegation, in almost all instances, Ombudsman's investigators sought information directly from the sources, notwithstanding the fact that CFNIS investigators had collected their information from the same sources. It should be noted that the purpose of this Office's investigation into this and all allegations was not to recommend the laying of charges, which lies outside the mandate of the Ombudsman's Office and indeed most ombudsman offices. This Office's investigation was conducted as an administrative review of the allegations brought forward, with a view to making the appropriate recommendations.

Lieutenant-General Leach was interviewed by Ombudsman's investigators on June 30, 2000 and July 10, 2000. Lieutenant-General Leach retired from the CF on August 8, 2000.

Lieutenant-General Leach asserted that he did not recall ever seeing Captain Poulin's memorandum dated July 9, 1996. He also stated, as he told the CFNIS investigators in 1998, that had he seen Captain Poulin's memorandum containing the allegations against Colonel Labbé, he would have taken action to deal with the matter.

Ombudsman's investigators interviewed Major Michel Lavoie as a witness to this allegation (Appendix III). Major Lavoie had previously served as Executive Assistant to then Major-General Leach when he was the Deputy Commander of Land Forces. Major Lavoie related that he had placed Captain Poulin's memorandum dated July 9, 1996 on then Major-General Leach's desk and remarked on its particular sensitivity to then Major-General Leach.

Major Lavoie stated he had asked then Major-General Leach about the status of Captain Poulin's memorandum, months later, in response to Captain Poulin's follow-up query, with Captain Poulin in close proximity. Major Lavoie notes that, while he considers Major-General Leach the most approachable and principled officer he has worked for, Major-General Leach's reaction to this inquiry appeared uncharacteristically stern. He recalls that Major-General Leach gestured in the affirmative in response to Major Lavoie's query, "so you have handled it, General?" Major Lavoie adds that he never raised the question again with Major-General Leach.

Ombudsman's investigators interviewed Lieutenant-Colonel Trudel as a witness to this complaint in the Hotel Belson, Brussels, Belgium on September 10, 2000. Lieutenant-Colonel Trudel replaced Major Lavoie as Executive Assistant to then Major-General Leach when he was Deputy Commander of Land Forces. Lieutenant-Colonel Trudel recalled Major Lavoie showing him Captain Poulin's memorandum that contained allegations against Colonel Labbé. Lieutenant-Colonel Trudel reported he searched for the memorandum after the June 17, 1998 press conference but it was no longer in the file. No explanation could be offered by any staff member of army headquarters interviewed by Ombudsman's investigators as to why the memorandum was not retained on the file.

Lieutenant-General Leach's secretary in the Land Forces Headquarters in St. Hubert was Ms. Ginette Nault. Ms. Nault was interviewed by the CFNIS investigators in July 1998 and the interview was recorded on audio cassette. A copy of the recording was provided to the Ombudsman's Office.

During her interview, Ms. Nault reported that she had been given the memorandum written by Captain Poulin and passed it on to Major Lavoie, the Executive Assistant. When she was shown a copy of Captain Poulin's July 9, 1996 memorandum, Ms. Nault was confident she had received that document, which contained the allegations against Colonel Labbé.

When asked if she had logged in Captain Poulin's memorandum, Ms. Nault was unable to provide a direct answer. Ms. Nault stated that she *normally* registered correspondence and that, after receiving a document she *would* have logged it in prior to giving it to Major Lavoie, who reviewed all correspondence before delivering it to Lieutenant-General Leach. Ms. Nault stated she did not recall logging in Captain Poulin's memorandum.

Ms. Nault's inability to specifically recall having logged in Captain Poulin's memorandum dated July 9, 1996 is consistent with information Captain Poulin related to Ombudsman's investigators. Specifically, Captain Poulin stated that, at the time he had submitted his July 9, 1996 memorandum, Ms. Nault had confided that, considering the sensitivity of his memorandum, she had not logged it in the office correspondence log.

Assessment

Major Lavoie and Ms. Nault both report seeing Captain Poulin's July 9, 1996 memorandum. Lieutenant-Colonel Trudel also recalled seeing this memorandum when he took over from Major Lavoie as Executive Assistant. Despite Lieutenant-General Leach's assertion that he does not recall seeing it, it is my view that it is highly unlikely Captain Poulin's July 9, 1996 memorandum containing allegations of misconduct against Colonel Labbé went unseen by Lieutenant-General Leach.

In reaching this finding, I place considerable weight on the information provided by Major Lavoie both to the CFNIS investigators in 1998 and more recently to my investigators. First, Major Lavoie recalls personally alerting then Major-General Leach of the placement of the particularly sensitive document on the top of routine correspondence. Further confirmation is provided when Major Lavoie later asked Major-General Leach about the status of Captain Poulin's memorandum. Major Lavoie received what he considered an atypically abrupt response from Major-General Leach, who replied that he didn't believe he had to report back to a captain, meaning Captain Poulin. Major Lavoie related to my investigators that he was caught off guard by Major-General Leach's response and noted that Major-General Leach was typically absolutely approachable. Compelled to obtain some response from Major-General Leach, Major Lavoie asked "so you've handled it, General?" He described Major-General Leach's response as a non-verbal affirmative gesture.

It should be noted that, even if then Major-General Leach had not in fact seen Captain Poulin's memorandum, one cannot help but conclude maladministration by CF authorities in this case. Although the chain of command retains a measure of discretion to deal with complaints about CF members as it deems appropriate, when members submit written memoranda to the senior leadership (or to any level of their chain of command) they deserve, as a minimum, to know that their concerns have been received, that they will be investigated where appropriate and that they will be informed of the results of the investigation and any action taken in response. This practice reassures CF members and the Canadian public that the CF chain of command is committed to acknowledging complaints of misconduct, investigating them in a timely fashion and taking corrective action whenever necessary. Unfortunately, this was not done in this case. Through no fault of his, Captain Poulin never received any official written acknowledgement of his memorandum, nor was he informed of any follow-up action or investigation (as it appears none was taken at the time).

The failure to acknowledge or to respond to the memorandum and to initiate an investigation is a troubling occurrence. Complaints must be taken seriously. To ensure that they are given the attention they deserve and that an administrative malaise relating to complaints does not develop or appear to have developed, systems must be put in place so that confirmation and responses are routinely and uniformly provided. Furthermore, it reflects poorly on the entire CF leadership when allegations of misconduct go unacknowledged and are not immediately investigated. Members who have complaints may share perceptions that the chain of command is covering up the problem and protecting its own, while subjects of complaints may be left with a taint or a cloud over their heads, particularly if allegations that are never investigated resurface at a later time.

At the "Giving a Voice to Ethics" Conference held in Ottawa on October 20, 1998, the Chief of the Defence Staff confirmed the organization's policy that witnesses should be encouraged to speak out promptly and report to their chain of command instances of abuse and sexual harassment. In return, he stated, witnesses will be listened to and action taken. In that context, it is not surprising that the failure to respond to his July 9, 1996 memorandum contributed to Captain Poulin's growing feelings of distrust of CF leaders. In other words, the social contract between leader and member had been broken by the former, with the result that the member lost faith in the organization's leadership. This feeling of distrust appears to have been a significant factor that drove the ongoing and deepening conflict Captain Poulin experienced in his workplace from the time the memorandum was released at the June 1998 press conference. Indeed, as a general proposition, the circumstances unveiled by the evidence in this instance could breed such lack of confidence in the chain of command that, in my view, CF members could well be motivated to eventually leak problems and concerns to the media in order to ensure they receive a response.

I caution against responding to the problem by writing it off as the responsibility of one individual who has now retired from the CF and pledging that the current leadership is "new and improved" and has shaken off its past. The CF, as a whole, must take concrete action now to improve its way of doing business and put appropriate measures into place to prevent such situations from recurring in the future.

Ombudsman's recommendations

I therefore recommend that:

1. **Procedures be adopted to ensure that correspondence submitted for the action of leaders and managers at any level is routinely logged and monitored to ensure a timely response by the appropriate level of the chain of command.**

In reply to my interim report, the Chief of the Defence Staff replied that generally accepted office management practices and procedures, including a system for logging and tracking of correspondence, are already well established for all staff, including the senior command within National Defence Headquarters (NDHQ). He acknowledged, however, that had these practices and procedures been correctly observed, the documents in question (Captain Poulin's memoranda of July 9 and July 15, 1996) would have been properly logged.

Although the Chief of the Defence Staff is not convinced that existing procedures were inadequate, he agreed with the importance of ensuring that service authorities remain vigilant in maintaining an accurate and complete records system for correspondence. In response to my recommendation, the Chief of the Defence Staff has directed "that current guidance be reviewed and that direction with respect to the management of recorded information be strengthened, where appropriate" (response of Chief of the Defence Staff, March 16, 2001, p. 2/5).

I accept this response to my recommendations and I look forward to seeing the results of this review and to being kept informed of any revisions made to strengthen the current direction.

2. **The records-keeping and monitoring procedures should require that all Canadian Forces members have a right to receive written acknowledgement of their complaint and a written response detailing any action taken in response, including the results of any investigation (wherever appropriate).**

The Chief of the Defence Staff has replied that he agrees in principle with this recommendation and the objective of ensuring that all CF members receive formal acknowledgement of their written complaints. He has expressed his belief that there is merit in this recommendation and has undertaken to examine this issue further. I accept this response to my recommendations and rely on the Chief of the Defence Staff to inform me of the specific steps taken to implement it once he has completed his examination.

3. **The records-keeping and monitoring procedures should require that, if no written response or follow-up action is logged, the matter be brought forward immediately to the attention of the officer who is the immediate superior of the member who failed to discharge the responsibility of logging or following up the complaint. If complaints are not logged or dealt with promptly, the matter should be referred to the Office of the Ombudsman for review.**

In response to my interim report, the Chief of the Defence Staff supports the intention to ensure that a system of checks and balances exists to provide recourse to a complainant in situations where a letter of complaint goes unanswered, whether through neglect or intentional disregard. In response to my Office's original recommendation, the Chief of the Defence Staff noted that the chain of command could not be by-passed by referring matters directly to his office for response. In his view as commander of the CF personnel, "In resolving issues and complaints, the Chain of Command must be engaged and must be part of the solution. If there is a breakdown in trust in that Chain, this breakdown must be addressed and corrected ..." (response of Chief of the Defence Staff, March 16, 2001, p. 3/5)

The Chief of the Defence Staff notes that a service member is always permitted to request an audience with his commanding officer as a "custom of the service." He also pointed out that any member "who believes that their complaint has not been dealt with, or dealt with adequately, may refer the complaint to an appropriate authority higher in the chain of command — normally the next superior officer in the reporting chain." He also referred to those oversight mechanisms, both internal and external to the CF, that are available to members to ensure that their complaints are adequately dealt with.

The Chief of the Defence Staff, in his response, referred to the "custom of service" that permits members to notify the responsible superior officer that a complaint has not been responded to properly. The recommendation I am making is not intended to interfere with that custom, but rather to ensure that it is clearly expressed in a set of procedures designed so that written complaints are given prompt and effective attention. Accordingly, the intent of my revised recommendation in this final report is to ensure that the "custom of service" referred to by the Chief of the Defence Staff is expressly stated in written procedures that require a specific response to written complaints and allow immediate recourse to avoid delays which may result from requiring members to channel their concerns through multiple layers of the chain of command. Such delays contribute to perceptions that the bureaucracy of the system serves to prevent effective and timely resolution of complaints.

My Office is available to all CF members who have attempted to use existing complaints mechanisms and who feel that the system has not fairly dealt with their complaints. It is my hope that two benefits will accrue through the Chief of the Defence Staff's acknowledgement of the role that my Office can play in assisting the CF to comply with records-keeping and monitoring procedures. First, recognition of the Ombudsman's role will heighten awareness of the need to strengthen recording and monitoring of complaints in a military institution committed to openness and transparency. Second, recognition of the function of the Ombudsman's Office by the Chief of the Defence Staff will increase awareness among CF members of the assistance this Office can provide.

My recommendations are capable of being put into place relatively quickly and with little additional administrative effort; all the same, they will be effective in preventing lapses by individual members of the chain of command in addressing serious concerns that are brought forward.

If these recommendations are implemented, the degree to which they achieve their purpose is dependent upon the chain of command's genuine commitment to following these procedures, not just for the sake of following the rules, but to ensure accountability and transparency. I believe that the implementation of these recommendations will not only improve the welfare of members of the Department of National Defence (DND) and the CF but will ultimately strengthen trust in the chain of command.

Allegation 2

Failure to take action in response to Captain Poulin's comments related to Colonel Labbé's leadership of the Canadian Land Forces Command and Staff College, Kingston

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In his written complaint to this Office, Captain Poulin states:

> During his interview with the NIS, Lt.-Gen. Leach admitted that he recalled: "... that he (Capt. Poulin) had comments about not only the course content but about DS orientation and qualifications and about the leadership style and habits of the Commandant Colonel. Serge Labbé ..." Therefore, Lt.-Gen. Leach had, according to CFAO 19.39 paragraph 11, an obligation to "... take action to deal with the incident." Furthermore, CFAO 19.39 paragraph 30 states: "Initial notification of alleged harassment may be made either orally or in writing." LCdr. Moore never brought these facts, and the related potential service offence(s), to light in his report.

Lieutenant-General Leach recalled Captain Poulin's memorandum dated July 15, 1996. He stated to Ombudsman's investigators that he had welcomed Captain Poulin's observations at that time because the course curriculum was about to be rewritten. He reported that he considered Captain Poulin's observations as factors to be included in the rewrite of the staff college course.

During his interview with Ombudsman's investigators, General Baril, the Chief of the Defence Staff, stated that, shortly after returning from the course in Kingston, Captain Poulin had made comments to him critical of the CLFCSC. General Baril stated:

> ... [Poulin's] comments to me [about the course] were very wise at that time and what he had told me was the influence of Colonel Labbé on the course ... was not the way it should be and I have been at the college and what he was telling me was right ... at that time Labbé was leaving the Staff College for the reason that [Poulin] had told me at that time. That was exactly the way [Leach and I] saw it too. And we had a young student who came out and who told me exactly what me and Leach thought — that we had to pull [Colonel

> Labbé] out because it was a bad influence for what we were trying to do with the Army. So from that point of view, [Captain Poulin] had it bang on.

Captain Poulin's memorandum dated July 15, 1996 contains many observations about course content, assessment standards and the quality of many of the course directing staff.

Captain Poulin's allegation suggests that, as a result of receiving Captain Poulin's memorandum dated July 15, 1996, Lieutenant-General Leach had a responsibility to take action in accordance with CF Administration Order 19-39. At that time, CF Administration Order 19-39 was the CF policy regarding the prevention of harassment in the workplace.

Assessment

Captain Poulin's memorandum dated July 15, 1996 contained his personal critique of the instruction, curriculum and assessment standards of the CLFCSC in Kingston. This memorandum was submitted to then Major-General Leach who did not dispute receiving this memorandum from Captain Poulin. In fact, he indicated he had welcomed Captain Poulin's input because the staff college was being closed for a one-year period in order to undertake a complete rewrite of the course. This memorandum does not appear to include any reference or comment that would have obligated Lieutenant-General Leach to take action under the CF harassment policy of the time.

Although the July 15, 1996 memorandum does not appear to have required action as a harassment complaint, it raised a number of significant concerns, including concerns about the instruction, curriculum and assessment standards of the CLFCSC and the general administration of the college. In his interview with my investigators, Lieutenant-General Leach acknowledged he welcomed these observations since a revision of the course was underway. A reasonable person can only conclude that at least some of Captain Poulin's concerns had merit. General Baril, the Chief of the Defence Staff, also acknowledged in his interview with my staff that Captain Poulin's complaints about the college and Colonel Labbé's administration were "very wise at that time" and that Captain Poulin "had it bang on."

Nonetheless, despite the chain of command's apparent agreement with some of the concerns Captain Poulin expressed, no member of the CF chain of command appears to have officially acknowledged any of Captain Poulin's concerns, informed him in writing of their response or communicated to him the changes which were made to the CLFCSC curriculum. The foregoing recommendations that address the need to ensure proper acknowledgement and response to members' concerns as soon as they are brought forward to the chain of command should help to prevent similar situations from occurring in the future.

Allegation 3

Failure to conduct an investigation into allegations of abuse of a subordinate and assault, contained in July 15, 1996 memorandum

In his written complaint, Captain Poulin states that:

> Records released under ATI/Privacy suggest that Lt.-Gen. Leach admitted knowing about and reading the July 15, 1996 memo (the second memo). At paragraph 12 of the July 15, 1996 memo, an incident is described whereby a senior officer choked a junior officer (Section 95 of the *National Defence Act* (abuse of a subordinate) and Section 266 of the Criminal Code of Canada (assault).
>
> By admitting knowledge of the existence of the July 15, 1996 memo but not conducting an investigation into this allegation of a service and perhaps even a criminal offence, Lt.-Gen. Leach was in direct violation of QR&O 107.02(1).
>
> It states that: "Where a complaint is made or where there are other reasons to believe that a service offence may have been committed, an investigation should normally be conducted as soon as practical to determine whether there is sufficient grounds to justify the laying of charges."
>
> Lt.-Gen. Leach's inaction in this regard may also be considered a service offence under section 124 of the *National Defence Act* — Negligent performance of duty.

The concern behind these allegations is that one of the incidents described in Captain Poulin's July 15, 1996 memorandum constituted a potential assault or service-related offence that Lieutenant-General Leach ought to have referred to the appropriate authority for investigation.

As previously noted, Lieutenant-General Leach acknowledges the receipt of Captain Poulin's July 15, 1996 memorandum. A copy of Captain Poulin's memorandum dated July 15, 1996 was provided to Ombudsman's investigators. This memorandum, entitled "Comments on course 9601 at CLFCSC," includes seven pages of what Captain Poulin described as "incidents that had a negative effect on the group as seen from a training perspective." The memorandum included what Captain Poulin observed to be several problems with the course. In reference to this specific allegation, Captain Poulin states:

> On one occasion a [Directing Staff] mentioned how — during a media training exercise — one of the students being interviewed had found himself in a 'tight spot.' To paraphrase the DS' words, the interviewer had the interviewee by the neck and was almost in a position to choke [the] interviewee. At the time, everyone understood this to be a simple figure of speech. So, although the comment itself seemed rather harmless the subsequent gesture posed by the DS was not. After making his remarks, he grabbed the student who had been interviewed and simulated choking him …

During an interview with Ombudsman's investigators, Captain Poulin confirmed that he was the student whom the member of the directing staff had choked as described in his memorandum. Captain Poulin did not make a complaint of assault at the time and did not name the individual he suggests had committed an assault despite knowing his identity.

Assessment

In his July 15, 1996 memorandum, Captain Poulin refers to the Directing Staff's actions as a "gesture" and states that he had "simulated choking" the student. Although this conduct appears out of place in a professional setting, I do not believe that a reasonable person would have necessarily concluded as a result of reading Captain Poulin's memorandum that a potential assault or service-related offence had occurred or been compelled to report the incident to the responsible authority for investigation. Nevertheless, regardless of whether a potential assault or service-related offence was alleged within the memorandum, Captain Poulin was entitled to have the concerns he detailed in both the July 9 and July 15 memoranda acknowledged by the chain of command and to be informed of the response and any action that was taken.

B. Allegations against General Maurice Baril, the Chief of the Defence Staff

General Baril is currently the Chief of the Defence Staff of the CF. In 1996, General Baril was the Commander of Land Forces and held the rank of Lieutenant-General. At that time, Captain Poulin worked directly as a speechwriter for then Lieutenant-General Baril. Lieutenant-General Leach was the Deputy Commander of Land Forces and held the rank of Major-General.

Allegation 1

Failure to conduct an administrative review or take corrective measures in response to allegations against Lieutenant-General Leach

In his written complaint submitted to this Office, Captain Poulin alleges:

> On or around October 23, 1998, The Canadian Forces Provost Marshal wrote and submitted a covering letter (NCN 510-001-98) along with LCdr. Moore's investigation report on Lt.-Gen. Leach for action by the Chief of the Defence Staff. (sic)
>
> The conclusion of the subject report stated: "... this issue should be reviewed from an administrative perspective by the chain of command." To the best of my knowledge, no administrative review or corrective measures were ever taken despite the NIS recommendation.
>
> Gen. Baril has a responsibility, under QR&O 4.02 (c) to "promote the welfare, efficiency and good discipline of all subordinates." His failure to take action regarding the NIS report was in direct violation of his responsibility under QR&O 4.02 (c).
>
> Gen. Baril's inaction in this regard may also be considered a service offence under section 124 of the National Defence Act — Negligent performance of duty.

Ombudsman's investigators interviewed General Baril on October 16, 2000 in his office at 101 Colonel By Drive, Ottawa. General Baril was provided with a copy of Captain Poulin's allegations against him prior to the interview.

General Baril related that, following a police investigation, there could be many reasons for further examination of an administrative nature, and that administrative action could range from a career review leading to someone's release from the CF to ensuring adequate office procedures exist. In any case, he stated, such a decision is his prerogative. In this instance, in response to Lieutenant-General Leach's alleged failure to respond to Captain Poulin's July 9, 1996 memorandum, General Baril's action was limited to obtaining assurances from Lieutenant-General Leach that adequate procedures existed to ensure that an item of such sensitivity would not go unseen in the future. General Baril stated:

> My reaction to a report like this was ... tell General Leach, "do you have a procedure now in place that when there is a delicate memorandum that comes in, if your EA or his staff officer has seen it, you must have some kind of an envelope or a file that this is a real hot one ... So that was my administrative review — to be assured by the Commander of the Army ...

General Baril continued:

> To me, the measure that was suggested by the NIS report was that I go in and make sure it doesn't happen again but that's for me to decide. I don't even have to explain to you what I do but that's what I have to do to have a clear conscience ...

General Baril stated that Captain Poulin was unlike most captains in that he:

> ... was one of the very few Captain[s] in the Headquarters of the Army who could barge into my office without ... even stopping for my EA because we were dealing [with each other] all the time ... if he had such a hot memo that he wanted us to look [at], either me or the Commander of the Army, and it took him two years to find out that none of us had read it because we never took any action, he did not exercise his privilege of coming to me and [saying] ... I discussed with you and I've given you the memo, what have you done about it? I mean, I was travelling with him and I knew his children ... he had complete and full access to me at all time[s].

General Baril suggested that he believed the results of the CFNIS investigation and, based on his personal knowledge of Lieutenant-General Leach, believed he had not seen Captain Poulin's memorandum. General Baril commented that he and then Major-

General Leach were appointed Commander and Deputy Commander of Land Forces respectively in 1995 to bring change to the army. General Baril stated:

> It would have been totally contrary to what we've been trying to do in the Army, ignoring something like this. So, I was convinced too, like the police, that Leach hadn't seen it. I knew I hadn't seen it ... if it would have been seen spark[s] would have flown ...

Assessment

General Baril informed my investigators that, regardless of the outcome of an investigation into a criminal or service-related offence, it remains the prerogative of the chain of command to take subsequent administrative action; this prerogative applies whether a recommendation is included in the report of the investigation or not. It is clear from the report of the investigation into the allegations against Lieutenant-General Leach that, based on the evidence it collected, the CFNIS believed that an administrative review of the matter was warranted despite their conclusion that there was insufficient evidence for laying any criminal or service-related charges.

Nevertheless, the circumstances surrounding how Lieutenant-General Leach could not recollect the July 9, 1996 memorandum and the allegations against Colonel Labbé were not subjected to any review, despite evidence that the memorandum was placed in his office and brought to his attention, until the Chief of Review Services became aware of the matter as a result of the speech that Captain Poulin prepared for the 1998 Defence Ethics Conference and the matter was ultimately referred to my Office for investigation.

General Baril informed my investigators that the extent of his administrative action in this case included obtaining assurances from Lieutenant-General Leach that an adequate system was in place to prevent a recurrence of the problem and relying on the character and integrity of Lieutenant-General Leach.

Beyond obtaining these assurances, it does not appear that General Baril took any tangible steps to determine whether appropriate measures to prevent a recurrence of the problem were actually in existence in July 1996. General Baril also does not appear to have inquired as to what, if any, new procedures were put into place by Lieutenant-General Leach since July 1996 to prevent correspondence of this nature from going unacknowledged in the future.

Unfortunately, General Baril's belief in the good character and integrity of Lieutenant-General Leach does little to address the failure to respond to a serious allegation of misconduct against a senior officer. It does little to reassure members of the CF who look to their organization to follow the highest standards of management and personnel practices.

My investigators have carefully reviewed the system in place when Captain Poulin submitted his memorandum on July 9, 1996 from an administrative perspective and have compared it with the procedures in place in 1998. It is clear that there was, in fact, no major change in the way complaints are received and processed.

The system in place in 1996 consisted of a correspondence register that was maintained by then Major-General Leach's secretary. Correspondence was reviewed by the Executive Assistant, Major Lavoie, prior to being passed on to the Deputy Commander of Land Forces, and documents judged to be of particular importance or sensitivity were brought to Lieutenant-General Leach's attention. As already noted, Major Lavoie stated that he followed this practice in this case by mentioning the sensitivity of the document concerning Colonel Labbé and indicating to Lieutenant-General Leach its placement on the top of routine correspondence.

As I have previously observed, the failure to adequately acknowledge or respond to the concerns contained in Captain Poulin's memoranda of July 1996 in a timely fashion appears to have contributed to Captain Poulin's mistrust of the CF leadership and the integrity of the institution in general. At the October 1998 Defence Ethics Conference, the Chief of the Defence Staff spoke of the importance of creating an environment of trust that encourages everyone to voice concerns and take responsibility for action. While I fully support the opinion he expressed at the time that, in most cases, the chain of command deals well with these matters, I also share his view that, on occasion, the system fails.

In my view, the system failed Captain Poulin. It did so by failing to take prompt notice of the ethical concerns he raised in his July 9, 1996 memorandum. General Baril's response to the CFNIS recommendation that the matter be reviewed from an administrative perspective unfortunately contributed further to Captain Poulin's perception that the chain of command had again failed to acknowledge any wrongdoing and take corrective measures. This distrust on the part of Captain Poulin added fuel to the conflicts he experienced in his workplace in Public Affairs, which led to further complaints against several staff members. These complaints are dealt with in Part Three of this report.

My Office has recommended procedures that will ensure that serious allegations such as those in Captain Poulin's July 9, 1996 memorandum are responded to in the future. The chain of command's acknowledgement that the current system needs to be improved and its implementation of these recommendations will go some way towards restoring faith in the commitment to improvement by the CF leadership.

The institution's leaders depend upon members to bring problems that occur within the CF to their attention so that appropriate action can be taken. In return, members are entitled to expect the chain of command to acknowledge their concerns and inform them of any investigation or other action that has been initiated in response. Such demonstrations of transparency and accountability serve to instil faith in the system and strengthen members' confidence in the chain of command.

It should not be forgotten that Captain Poulin went to considerable effort to document concerns about the administration of the CLFCSC and the perceived misconduct by Colonel Labbé. Whether these concerns ultimately turned out to be warranted or not, Captain Poulin was entitled to an acknowledgement that his concerns had been received and to be informed of follow-up action that was taken in response. This did not happen.

In my view, the chain of command should acknowledge that the system did not work in Captain Poulin's case and should confirm to him personally, in writing, its commitment to ensure that future concerns are acknowledged and responded to.

I have conducted research into how other defence organizations deal with circumstances in which the organization has failed to properly handle a complaint by one of its members. Australia's military is often used as a reference point on many issues by the CF, as it has much in common with our own. Moreover, Australia's Defence Force and its Department of Defence appear to embrace values and ethics similar to those of DND and the CF.

The Australian *Defence Service Charter* pledges that "Defence is committed to being honest, open and fair ..." and provides that it "will maintain the highest possible standards of service" in dealing with all Australians, including members of its Defence Force. The charter also commits the organization to the following:

> ... if we do not meet these standards we will explain what has happened and try to put things right. *We will not hesitate to apologize if we are wrong* ... (emphasis added)

The CF and DND also espouse commitments to "honesty," "openness" and "fairness," and these ethical principles are articulated in publications and advocated by leaders throughout the CF. They are the result of the Office of the Judge Advocate General's promotion of reform of the military justice system and serve as the ethical compass for mechanisms dedicated to the resolution of grievances and harassment complaints.

The Office of the Judge Advocate General claims recent amendments to the *National Defence Act* (S.C. 1998, chapter 35 assented on December 10, 1998) "... modernize the military justice system by enhancing its transparency, fairness and effectiveness." According to the Office of the Judge Advocate General, such amendments instil "confidence in the men and women of the Canadian Forces that their justice system is fair and open ..."

Similarly, the Defence Ethics Program within the office of the Chief of Review Services includes "honesty" and "fairness" among the "ethical obligations" of members of the CF and employees of DND.

In his speech to the 1998 Defence Ethics Conference, General Baril, the Chief of the Defence Staff, also referred to ethical imperatives in speaking of the need "to create a new culture, a culture of trust and openness." General Baril also remarked that "*leaders must acknowledge that the direct chain of command is not always trusted and that we make mistakes*" (emphasis added) and that in certain instances there should be an acknowledgement that "we should have done better." While General Baril was speaking in the context of the treatment of victims of sexual harassment, his comments on the necessity to take prompt action are equally important in the handling of other complaints.

The Chief of the Defence Staff pledged the following:

> My message to you today is this: First, everyone has a voice in ethics. Second, *everyone who expresses ethical concerns can do so safely and will be listened to* ... Whether we are victims or *witnesses of unethical situations, we have a moral obligation to act promptly* in order to prevent harm and relieve suffering. (emphasis added)

I have contacted Australian Defence Force officials responsible for administering the Australian *Defence Force Charter*, who cited several recent instances in which the organization has acknowledged failure. It is accepted practice for the organization to issue such acknowledgements when it finds that administrative deficiencies have occurred.

In fact, the Australian Defence Force has apologized not only for the mishandling of complaints, but also for the distress and disruption caused to the complainant and his/her family. In a particularly relevant example, when a member complained about the lack of a thorough investigation into a complaint, the organization wrote to the complainant as follows:

> Finally, I *must apologize for the failure of the CRA (Complaint Resolution Agency) to conduct a thorough administrative review of your case when this additional evidence was made available in 1998.* I am acutely aware that the pursuit of a complaint usually involves an emotional and material cost to the complainant and I sincerely regret that the actions of this Agency may, in some way, have added to that burden. (emphasis added)

Similarly, I believe that the CF senior leadership should welcome an opportunity to "set the record straight," admit that "we could have done better" and accept responsibility for "putting matters right" when administrative deficiencies or oversights have been identified and brought to its attention. This imperative is particularly significant when a witness brings forth serious allegations that were not dealt with according to the standards laid out by the Chief of the Defence Staff.

As the person statutorily vested with the command and control of the organization, the Chief of the Defence Staff is entrusted with the custodianship of the system. He therefore has a fundamental obligation to ensure the integrity of the organization. It is also appropriate that an acknowledgement of failure and regret come from the Chief of the Defence Staff since it was his immediate subordinate, the Deputy Commander of Land Forces, who did not respond to Captain Poulin's complaint in 1996.

I note in passing that a complete and sincere apology would go a long way to restore the complainant's trust in the leadership of the CF and could end five years of internal wrangling. In her article "Apologies," M.L. Wagner states:

> People who have been hurt or humiliated often hope for an apology. They may hope that an apology ... will restore trust, dignity and, perhaps, a sense of justice.
>
> — *UCI Ombudsman: The Journal*, California Caucus of College and University Ombudsman, 1996.

Ombudsman's recommendation

I therefore recommend that:

4. **General Baril should, as the commander of the Canadian Forces personnel, issue an acknowledgement of failure and regret on behalf of the chain of command to Captain Poulin and confirm to him personally the Canadian Forces' commitment to implementing procedures to ensure that when members bring forward issues and concerns to the chain of command they will be responded to in all cases.**

In response to this recommendation in my interim report, the Chief of the Defence Staff commented that "I deeply regret the breakdown in communication and the fact that both he [Captain Poulin] and his family suffered undue stress and anxiety as a result" (response of Chief of the Defence Staff, March 16, 2001, p. 4/5). In his response to the draft report, the Chief of the Defence Staff indicated his acceptance of this recommendation and undertook to write personally to Captain Poulin.

On April 17, 2001, in response to my recommendation, the Chief of the Defence Staff wrote to Captain Poulin expressing his "personal regret that the Chain of Command was not able to address your concerns early on" and acknowledging the unfortunate impact on Captain Poulin and his family.

Captain Poulin responded to the Chief of the Defence Staff on April 20, 2001 and accepted his "unreserved expression of regret."

In his letter to Captain Poulin, the Chief of the Defence Staff also referred to improvements which have been made to the handling and resolution of complaints since the events in this case occurred and he restated his commitment to review procedures to examine where additional improvement is warranted. Although Captain Poulin expressed some initial concerns about the inclusion of these comments in his letter of apology, I accept these statements as an expression of the commitment of the Chief of the Defence Staff to implementing procedures that ensure members will be responded to in all cases when they bring forward issues and concerns to the chain of command, as was suggested by the recommendation contained in my interim report. I accept the Chief of the Defence Staff's response to this part of my recommendation.

The Chief of the Defence Staff wrote further to Captain Poulin on April 19, 2001 indicating that " … I believe it would beneficial for us to meet and discuss the way ahead, now that the Ombudsman's investigation is complete and his report is being finalized" and inviting Captain Poulin to contact his staff to arrange for a suitable time and date for a meeting.

I am pleased and encouraged by the Chief of the Defence Staff's response to my recommendation, by his expression of regret and by his acknowledgement of the impact which these events have had on Captain Poulin and his family. I take his positive response to my recommendations and his invitation to meet personally with Captain Poulin as an indication of his willingness to address, not only the maladministration which my Office has identified in this case, but also the impact on Captain Poulin's professional and personal life by assisting Captain Poulin to achieve closure on these difficult chapters in his career with the CF.

Allegation 2

Interference with proposed mediation of Captain Poulin's complaint

In his written complaint submitted to this Office, Captain Poulin states :

> My initial agreement to mediate my situation with Mr. Sterne under the auspices of Mr. Gervais, was dismissed by Gen. Baril.
>
> Gen. Baril's actions, if founded, was a clear violation of QR&O 4.02(c). It states: "An Officer shall promote the welfare, efficiency and good discipline of all subordinates." Gen. Baril's direct intervention prevented my family and I from bringing closure to this whole affair.

This allegation is identical to the allegation Captain Poulin made against then Colonel Lise Mathieu and will be dealt with later in my report.

PART TWO:

Canadian Forces National Investigation Service investigations into the events outlined in the July 9 memorandum and Lieutenant-General Leach's failure to respond

Notwithstanding the fact that Captain Poulin's complaint included the way the Canadian Forces National Investigation Service (CFNIS) handled its investigations, as well as the military police complaints process that was followed, Major-General Penney, the Chief of Review Services, referred the matter to the Ombudsman's Office. Since the matters involving Captain Poulin arose prior to December 1, 1999, his complaints fell outside the jurisdiction of the Military Police Complaints Commission; they did, however, fall within the mandate of the Ombudsman's Office, outlined in Ministerial Directives for the Ombudsman's Office dated June 16, 1999. Major-General Penney referred these matters to this Office because he recognized that only an outside and independent review could bring closure to the matter, for Captain Poulin and for all others concerned. Attempts to deal with his complaints internally had only led to further discord and additional complaints. When I agreed to take this matter on, it was on the understanding that this Office would accept no restrictions. These terms of reference were accepted to preserve both the appearance and reality of impartiality.

Unfortunately, when my interim report was released, the current Canadian Forces Provost Marshal (CFPM) Colonel Dot Cooper, as well as the Deputy Provost Marshal Professional Standards, took exception to the jurisdiction of the Ombudsman's Office to review matters related to the CFNIS investigations and to the military police complaints process. The objection to the jurisdiction of this Office also pervaded the responses given to the specific recommendations.

I am disappointed and disheartened by this response. Objections based on jurisdictional grounds detract from the substance of the issues and needlessly undermine the benefits that specific recommendations can accomplish. These jurisdictional challenges stand in marked contrast to the strong endorsement of the interim report and the considerable support shown by the Chief of the

Defence Staff. Indeed, they also stand in stark contrast to the positive responses that recommendations from this Office have received from the CFPM Brigadier-General Samson in the past.

Not only do technical objections imperil the substance of the recommendations, they are even more surprising in light of the fact that the Chief of Review Services referred this matter to this Office because internal mechanisms had been unable to settle things. Most importantly, these technical objections represent an unhealthy attempt at carving out pockets of authority that would remain impervious to the low-level settlement processes this Office offers. It is apparent that these technical objections represent a misunderstanding of the nature of the role of the Ombudsman. As Ombudsman, I do not have executive power. I lack the ability to order anyone to do anything. I cannot force people to implement my recommendations. I must rely on moral suasion, the merits of the recommendations themselves and the cooperation of leaders within the organization. Their goodwill is necessary to ensure fair treatment and to acknowledge unfairness when it has occurred. This is the only way that I can promote positive change and assist in remedying injustice.

I understand that changes are not always easy or painless to implement and, in many cases, require strong leadership by persons who have the will to make changes. I strongly encourage the current CFPM to consider the goals and objectives of the review conducted by this Office and to view the recommendations substantively, not jurisdictionally. It is my hope that the CFPM Colonel Cooper will accept this opportunity to help remedy the instances of maladministration and unfairness that this Office has identified, and will come to view its contributions in the area of the Military Police and the military police complaints process as a positive thing.

C. Allegations against Captain Bud Garrick

Captain Garrick was the CFNIS investigator assigned to lead the investigation into the allegations against Colonel Labbé contained in Captain Poulin's memorandum dated July 9, 1996. In his memorandum, Captain Poulin alleged Colonel Labbé, at that time Commandant of the Canadian Land Forces Command and Staff College (CLFCSC) in Kingston, Ontario, behaved inappropriately toward a civilian member of the dining room staff at the Fort Frontenac Officers' Mess on May 3, 1996.

The investigation into this matter was initiated on June 17, 1998 after Captain Poulin's memorandum became public. In his complaint to the Ombudsman's Office, Captain Poulin indicates that the CFNIS investigation of the allegations was not thorough or competent and that evidence was overlooked.

This Office provided Captain Garrick with an extension to March 28, 2001 to respond to the relevant portion of the interim report to accommodate his return from an operational deployment. Captain Garrick responded to Ombudsman's investigators by telephone, confirming that he had no comments to offer in relation to the portions of the interim report that had been provided to him. Comments that were provided by the current CFPM in relation to this Office's review will be addressed later in this report.

Allegation 1

Allegation of insufficient investigation into Captain Poulin's allegations against Colonel Labbé

Captain Poulin states in his complaint:

> On or around July 27, 1998, sometime in the afternoon, Capt. "Bud" Garrick (Operations Officer, CFNIS Central Region) phoned me and said that, without wishing to compromise the investigation, the woman I had alluded to in my memo dated July 9, 1996 had been found.
>
> Capt. Garrick also added that the woman in question[...] had given her testimony to the NIS wherein, he added, she corroborated my assertions contained in the subject memo. Capt. Garrick also mentioned, however, that she was not interested in laying charges against Col. Labbé. She no longer worked in DND and she felt that this whole issue was closed. If Capt. Garrick had found the waitress in question and she corroborated what I had said (using different words) then how was it possible to conclude there was no evidence. There were witnesses!

Captain Poulin also states:

> On or around July 27, 1998, Capt. Garrick assured me that he had found the waitress with whom I alleged to have received information about Col. Labbé. Yet, at no time did he wish to confirm her identity with me to ensure she was, in fact, the waitress I had alluded to in

> my memo dated July 9, 1996. This, in spite of the fact that the waitress he had found did not even match the physical description I had given the NIS during my testimony to the investigators.

Captain Poulin further states:

> In his August 1998 NIS investigative report on my allegations contained in my memo dated July 9, 1996, Capt. Garrick asserted that there was no evidence that Col. Labbé had committed any service offence on May 3, 1998. I had specified to him that the date of the incident was May 3, 1996.
>
> Clearly, there would be no evidence to be found against Col. Labbé for May 3, 1998 given that it was the wrong date and none of the parties involved were even at the Fort Frontenac Officers' Mess on or around that date in 1998.

In Captain Poulin's diary entry of July 28, 1998, he writes:

> Yesterday afternoon Capt "Bud" Garrick (NIS) called and said, without compromising his investigation he confirmed that the woman I had alluded to in my memo dated 9 July 1996 had come forward and corroborated my assertions. [...]she said she was not interested in laying charges against Labbé.

Ombudsman's investigators interviewed Captain Garrick on audio tape on July 27, 2000 in the 5th floor boardroom at 55 Murray Street. A copy of Captain Poulin's allegations against him was provided to Captain Garrick prior to his interview.

During this Office's investigation into this matter, Ombudsman's investigators were given full access to the CFNIS investigative file. They reviewed all documents, reports and video and audio recordings collected and produced during the CFNIS investigation.

During his interview, Captain Garrick acknowledged calling Captain Poulin on July 27, 1998 and informing him they had found the waitress and wished to confirm her identity. He stated that Captain Poulin was supplied with the waitress' full name, but Captain Poulin did not recognize it. Captain Garrick further stated that he did not inform Captain Poulin the waitress had corroborated his assertions. Rather, Captain Garrick related, he attempted to ascertain whether he had in fact found the waitress Captain Poulin had alluded to in his memorandum dated July 9, 1996.

Captain Garrick indicated that the waitress' physical description had changed because she had cut her hair and let it return to its natural colour. He said there was no doubt in his mind that they had the correct woman because other witnesses interviewed confirmed that she herself came forward once Captain Poulin's July 9, 1996 memorandum became public.

Ombudsman's investigators interviewed the former mess waitress on audio tape on July 18, 2000 at her residence. She stated that she was present at the class barbecue in May 1996, but she does not recall Colonel Labbé or anyone else rubbing her back.

On July 24, 2000, Ombudsman's investigators interviewed one of Captain Poulin's classmates at the CLFCSC who had dated the former waitress, but the classmate stated that the former mess waitress had never related any incident involving Colonel Labbé to him.

In response to Captain Poulin's complaint that Captain Garrick asserted that there was no evidence that Colonel Labbé had committed any service-related offence on May 3, 1998 (when the correct year was in fact 1996), Captain Garrick acknowledges this was a typographical error. Having reviewed the complete report along with all of the documents contained in the CFNIS file, it is apparent that the year 1998 was clearly an error and that the events investigated by the CFNIS focused on May 1996.

Assessment

I am satisfied that my investigators have confirmed that the witness located and interviewed by the CFNIS during its investigation was the former mess waitress referred to by Captain Poulin in his allegations against Colonel Labbé. Neither the former mess waitress nor any other witness was able to provide CFNIS investigators with information to support charges of criminal or service offences by Colonel Labbé. The information the CFNIS investigators relied upon in arriving at their conclusions was independently confirmed by my investigators directly with the witnesses themselves. I am satisfied there is no basis to conclude that the CFNIS investigation into Captain Poulin's allegations against Colonel Labbé was inadequate.

Allegation 2

Failure to interview witnesses during the CFNIS investigation and to verify the assertion of one witness with Captain Poulin

Captain Poulin also maintains in his written complaint that:

> Capt. Garrick did not ensure that the following people were interviewed although their evidence was relevant to the NIS investigation demonstrating, once again, that his actions were also in direct violation of QR&O 107.03. It states that: "An investigation conducted pursuant to this chapter (Chapter 107) shall, as a minimum, collect all reasonably available evidence bearing on guilt or innocence of the person who is subject of the investigation."
>
> Capt. Liam Porter — He was my neighbour in the dorms at CLFCSC during serial 9601 and I often discussed sensitive issues with him. I had deliberately highlighted the importance of his testimony to LCdr. S. Moore to no avail. On or around June 21, 1999, I sent an e-mail to Maj. L. Porter and asked him if the NIS had ever interviewed him. On June 25, 1999 Maj. L. Porter responded to my question stating that the NIS "... never did call (him) about any of this stuff ... "
>
> Capt. Marc Bossi — He remembered me discussing the Col. Labbé incident with him during the Spring of 1996 well before the end of the course and before I knew my final course mark. Even though I had provided this information to LCdr. Moore, no information was ever gleaned from him.
>
> Capt. Isabelle Compagnon — She was a member of the staff at CLFCSC. She recalls that, around that same period of time in 1996, she had been warned about Col Labbé's conduct towards women. She claims to have taken these warnings so seriously that she changed her social activities at night and always made it a point to leave early from any CLFCSC function.
>
> Then Master Corporal M.C. Tremblay — She worked in the CLFCSC orderly room and contrary to MWO Parker she wrote to me on or around June 16, 1999, stating she felt that I was " ... very nice throughout the course ... " (The NIS report only sought to portray my behaviour in the CLFCSC orderly room as negative). Lt.-Col. Robertson had blamed her for the drinking on

> the bus incident but Capt. Garrick never sought her out to verify Lt.-Col. Robertson's version with that of then Master Corporal M.C. Tremblay.
>
> Documents released through ATI revealed that Lt.-Col. D. Chupick (a member of the Directing Staff at CLFCSC) gave an interview to the NIS on or around July 3, 1998. He stated: "He (Lt.-Col. Chupick) does not know what prompted Poulin to do this — no reason for doing it in his mind (Lt.-Col.). If student had a problem ... the student could come and see Branch DS (Poulin could have come to see Lt.-Col. Chupick but did not from what Lt.-Col. can recall). Never gave Lt.-Col. any indication that he (Poulin) was going to do this."
>
> You will note that Lt.-Col. Chupick was not in my chain of command nor had I seen him since Gagetown sometime in 1983! Had I approached Lt.-Col. Chupick, he would have been required to investigate to actions of Col. Labbé who had real and apparent authority over Lt.-Col. Chupick.
>
> Lt.-Col. Chupick was also the officer who agreed to take Pvt. Kyle Brown under his command at the Royal Canadian Horse Artillery from the Airborne Regiment in the Winter 1993/94.
>
> Lt.-Col. Chupick was also the individual who promptly laid charges against Pvt. Brown almost immediately upon Pvt. Brown's arrival at the unit from the Canadian Airborne Regiment. Lt.-Col. Chupick was the same individual who had met with the JAG representative to discuss Brown's case and excluded Pvt. Brown's attorney from the meeting (collusion?). The combination of these factors led me to conclude very early on that I could not turn to him for help.
>
> At no time did Capt. Garrick verify the assertion Lt.-Col. Chupick made about me or seek an explanation as to why I did not turn to him for help.

On August 1, 2000, Ombudsman's investigators interviewed Major Liam Porter in the 5th floor boardroom at 55 Murray Street. Major Porter said he was a friend of Captain Poulin and they had a number of discussions about the college and the course while at the CLFCSC, but Captain Poulin never mentioned anything about his July 9, 1996 memo. Major Porter stated that he first learned of Captain Poulin's July 9, 1996 memorandum when the story broke in the media.

On February 24, 2000, Ombudsman's investigators interviewed Captain (Retired) Marc Bossi at his office Mr. Bossi said he visited Captain Poulin at the CLFCSC near the end of May 1996 while he was there on a two- or three-day course. Mr. Bossi recalled that, during one of their evenings together, Captain Poulin mentioned the incident of drinking on the buses and what he witnessed involving Colonel Labbé and the waitress. Mr. Bossi did not believe that Captain Poulin provided any details regarding Colonel Labbé and the waitress. Mr. Bossi also stated he was not personally at the college at the time any of these incidents allegedly occurred.

On November 19, 1999, Ombudsman's investigators interviewed Captain Isabelle Compagnon in the interview room at 55 Murray Street. In May of 1996, Captain Compagnon was assigned to the CLFCSC in Kingston as the Mess Administration Officer. Captain Compagnon stated, however, that she neither experienced nor witnessed any basis for rumours about Colonel Labbé.

Captain Garrick's and Master Warrant Officer Peter MacFarlane's notebook entries for July 3, 1998 record their interview with Lieutenant-Colonel Chupick. Lieutenant-Colonel Chupick was a member of the Directing Staff and the Artillery Branch Advisor for the CLFCSC. Lieutenant-Colonel Chupick stated he does not remember Captain Poulin ever approaching him regarding Colonel Labbé and adds that, as the Artillery Branch Advisor, he would have been a resource for Captain Poulin, who was also an artillery officer at that time. Lieutenant-Colonel Chupick recalled, however, that Captain Poulin was very upset over the final mark he received at the college. Master Warrant Officer MacFarlane's notebook entry records Lieutenant-Colonel Chupick's recollection that in response to his final grade, Captain Poulin had remarked "you have not heard the last of me."

Captain Garrick stated he felt there was no reason or obligation to report back to Captain Poulin about his interview with Lieutenant-Colonel Chupick for verification regarding his findings, particularly in light of the other evidence obtained by the CFNIS during its investigation.

Assessment

As I have already noted, based upon the information collected by my investigators and the review of the CFNIS investigative file, there is no basis to conclude that the CFNIS investigation into the allegations of misconduct against Colonel Labbé was inadequate. I appreciate that Captain Poulin would be sensitive to Lieutenant-

Colonel Chupick implying that Captain Poulin's dissatisfaction with his course grade suggested motive for Captain Poulin's allegations against Colonel Labbé. However, in light of all the other evidence collected by the CFNIS during its investigation, I am not satisfied that these comments played a significant role in the conclusion that there was no evidence to charge Colonel Labbé with a criminal or service-related offence.

Allegation 3

Failure to investigate allegations against Colonel Labbé regarding incident of drinking on a bus, as described in July 9, 1996 memorandum

Captain Poulin states in his written complaint:

> Capt. Garrick's NIS investigative report (NCN 118-01-98) dated August 1998, acknowledged the drinking on the bus incident I alluded to in my memo dated July 9, 1996, but failed to make any recommendations on this issue even though "drunkenness" was a service offence under section 97 of the National Defence Act. Capt. Garrick also accepted Lt.-Col. A.F. Robertson's version of the drinking on the bus incident concluding that it was the fault of then Master Corporal M.C. Tremblay without questioning Master Corporal Tremblay to verify the validity of Lt.-Col. Robertson's assertions.
>
> Ironically, on or around May 17, 1996, the then Maj. Robertson had written a letter stating Master Corporal Tremblay's performance during the trip was "excellent" and that in his opinion " ... she is ready for much more demanding responsibilities now, and clearly has potential for advancement well beyond the rank of Sgt." Capt. Garrick's actions were also in direct violation of QR&O 107.03. It states that: "An investigation conducted pursuant to this chapter (Chapter 107) shall, as a minimum, collect all reasonably available evidence bearing on guilt or innocence of the person who is subject of the investigation."

Captain Poulin also states:

> Captain Garrick also accepted Lt.-Col A.F. Robertson's version of the drinking on the bus incident concluding that it was the fault of then Master Corporal M.C. Tremblay without questioning Master Corporal

> Tremblay to verify the validity of Lt.-Col Robertson's assertions.

The CFNIS investigation report compiled by Captain Garrick records:

> [Colonel Labbé] had received a letter written by LCol ROBERTSON, which he provided a copy of, in this letter LCol ROBERTSON addresses this issue of officers drinking on the bus. In essence he states that the whole affair was blown out of proportion, Col Labbé was not at the mess during this incident and a MCpl was responsible for ensuring that all students boarded the bus. Unfortunately some students did bring a glass of liquor on the bus.

Captain Garrick recalled reviewing Captain Poulin's allegations of drinking on the buses in 1996. Captain Garrick's notebook entry records his interview with Lieutenant-Colonel Robertson on September 3, 1998 at 1315 hours. Lieutenant-Colonel Robertson had been a member of Colonel Labbé's staff at the CLFCSC in 1996.

Captain Garrick notes that during his interview, Lieutenant-Colonel Robertson informed him he stands by his letter to Colonel Labbé dated July 28, 1998. In it, Lieutenant-Colonel Robertson acknowledged his responsibility for the lack of adequate supervision and adds that he was rebuked for not providing supervision or ensuring that adequate rank was present for this activity.

In the letter from Lieutenant-Colonel Robertson to Colonel Labbé dated July 28,1998 Lieutenant-Colonel Robertson states:

> I will also comment briefly on [Poulin's] concern about drinking on buses. The bottom line is that I am the guilty party. In the specific case discussed, I believe [Poulin] was referring to the Saturday night course 9601 left for the Battlefield Study. I had made arrangements with Liam Thomas to have MWO Parker at the Fort to get everyone on the bus in good order. Unfortunately ... it didn't happen, with the result that Master-Corporal Tremblay was left holding the bag, which included the bus showing up late. I found out afterward that the students used this as an excuse to board the bus in the dark with drinks in their hands (would not have happened if the MWO had been there). I got a mild slap on the wrist from you through the Deputy (Commandant) about the absence of a

> senior NCO or officer in general and I subsequently spoke to the Course leader in particular on the drinking, and left it that.

Assessment

Police investigators retain the discretion to decide whether or not to pursue allegations of misconduct that are brought to their attention. They may take many factors into account when exercising this discretion. In this case, Captain Garrick appears to have based his decision not to investigate Captain Poulin's allegations against Colonel Labbé on a number of considerations, including the fact that the matter appeared to have been dealt with by the CLFCSC in 1996. I am satisfied in this case that Captain Garrick's decision not to pursue an investigation into these allegations was not an improper exercise of his discretion.

Allegation 4

Failure to investigate allegations that Colonel Labbé arranged for transportation to take officers to an exotic dancing establishment in the 1980s

Captain Poulin states in his written complaint:

> In my memo dated July 9, 1996, addressed to the then Maj.-Gen. Leach, I stated: "While employed as the Bn Comd at CFB Valcartier, QC, in the late 1980's, Col Labbé had arranged for the transportation to take officers, dressed in combat uniforms, to a local strip club. One of the stripper's acts consisted of her dressing in one of the officer's uniforms." This allegation was included in Capt. Garrick NIS investigative report (NCN 118-01-98) dated August 1998 but, to the best of my knowledge, Capt. Garrick did not investigate this allegation. This inaction was also in direct violation of QR&O 107.02(1). It states that: "Where a complaint is made or where there are other reasons to believe that a service offence may have been committed, an investigation should normally be conducted as soon as practical to determine whether there is sufficient grounds to justify the laying of charges."

During his interview with Ombudsman's investigators on July 27, 2000, Captain Garrick stated the CFNIS did review this allegation, which allegedly occurred sometime in the late 1980s. Captain Garrick stated that Captain Poulin's information was based on a rumor of which he had no first-hand knowledge.

In his memorandum dated July 9, 1996, Captain Poulin states that he obtained this information through discussion with fellow students while at the CLFCSC. Specifically, Captain Poulin states:

> ... when other students where (sic) made aware of the said earlier facts they did not seemed (sic) surprised by Col Labbé's behaviour. Instead, they told me about another (sic) incidents they had witnessed first hand ...

Assessment

As I have noted, police investigators retain the discretion to decide whether or not to pursue allegations of misconduct that are brought to their attention. They may take many factors into account when exercising this discretion, including the age of the complaint, the existence of witnesses and whether the information provided appears to be based on rumor or hearsay, which would be difficult to substantiate. I am not satisfied that Captain Garrick's decision in this instance was an improper exercise of his discretion as a Military Police officer.

D. Allegation against Master Warrant Officer Peter MacFarlane

Master Warrant Officer MacFarlane is a CFNIS investigator who was assigned with Captain Garrick to investigate allegations against Colonel Labbé in Captain Poulin's memorandum dated July 9, 1996, which became public on June 17, 1998. Captain Poulin complains that Master Warrant Officer MacFarlane failed to follow up on his request that the CFNIS investigate whether Colonel Labbé was receiving legal representation and advice at public expense during its investigation. Master Warrant Officer MacFarlane responded to the relevant portion of the interim report on March 14, 2001. His comments have been carefully reviewed and clarifications to the final report made where appropriate.

Allegation

Refusal to investigate whether Colonel Labbé was receiving legal representation and advice at public expense

In his written complaint, Captain Poulin states:

> On or around July 3, 1998, I (Capt. Poulin) went over to the Constitution building and met with WO MacFarlane (Investigation Analyst, CFNIS Central region) and handed him a newspaper clipping along with a note addressed to Lt-Cdr. S. Moore. After reading my comments and acknowledging receipt of a video I had given him, WO MacFarlane said they would look into who was actually paying for Col. Labbé's lawyer and why he was involved at this stage of the process.
>
> My understanding of his comments were that no one from the NIS had yet made it clear to Col. Labbé as to whether he was a "witness" or the "subject" of their (meaning NIS) investigation. WO MacFarlane went on to say that if it was shown that DND/CF was paying for Mr. Hendin's services then the NIS would have to launch another investigation into that aspect of the case.
>
> At no time was I ever informed of a NIS investigation into this aspect neither of the case, nor of the results of this possible NIS investigation even though I was the plaintiff. It would therefore appear that WO MacFarlane was in direct violation of QR&O 107.02(1). It states that: "Where a complaint is made or where there are other reasons to believe that a service offence may have been committed, an investigation should normally be conducted as soon as practical to determine whether there is sufficient grounds to justify the laying of charges."

On July 27, 2000, Ombudsman's investigators interviewed Master Warrant Officer Peter MacFarlane on audiotape in the 5th floor boardroom at 55 Murray Street. A copy of Captain Poulin's allegation against him was provided to Master Warrant Officer MacFarlane prior to the interview. As previously noted, Ombudsman's investigators also reviewed the full CFNIS file in relation to its investigation of allegations of misconduct against Colonel Labbé.

Allegation

Provision of libellous and defamatory comments to CFNIS investigators and misuse of personal information

During the course of the CFNIS investigation, Colonel Labbé was interviewed as the subject of the allegations in the July 9, 1996 memorandum. Pursuant to *Privacy* and *Access to Information* requests, Captain Poulin received copies of notes Colonel Labbé prepared for his interview with CFNIS investigators. It is Captain Poulin's view that comments Colonel Labbé provided to these investigators were libellous and defamatory and involved a misuse of Captain Poulin's personal information.

Specifically, Captain Poulin states in his written complaint:

> Colonel Labbé also wilfully made several false statements to the NIS when he used my CLFCSC course report and interpreted the grades I was awarded in a manner that was inconsistent with the CLFCSC training manual. The course report that both he and I signed stated: "Captain Poulin is a highly intelligent and hard working officer who generally maintained a positive attitude throughout ... He has an excellent intellect to support his problem-solving skills and was original in developing workable solutions to complex tactical problems ... A confident leader, he has demonstrated that he can effectively organise a staff team to produce the required results ..."
>
> In contrast to the course report, Col. Labbé stated to the NIS, in his official capacity as a former Comdt CLFCSC, using these same course report grades, that now, in hindsight: "He (Capt Poulin) was generally considered the weakest Canadian student and his overall C grading was considered overly generous ..."

Captain Poulin also states:

> Col. Labbé misused his official position as the former Comdt CLFCSC to impart wrongful personal information about me. Col. Labbé asserted that: "... he (Capt Poulin) had the unfortunate distinction of being graded 10th out of 10 in at least two of the three tutorials." I do not remember, ever being graded 10th out of 10 in at least two of the three tutorials. At no time was such a ranking discussed with me and

> nowhere was it indicated either on my mid-tutorial or my end tutorial assessments.
>
> Col. Labbé, in his official capacity as a former Comdt CLFCSC, provided wrongful personal information about my performance on the three tutorials at CLFCSC. Specifically, he stated to the NIS that: "... he (Capt. Poulin) never exceeded a very weak C grade."
>
> In contrast to Col. Labbé's assertions, my second CLFCSC tutorial stated: "His (Capt. Poulin) oral communication skills are above average as is his knowledge of staff procedures ... He is a confident officer who has used originality in his tactical solutions to good effect ... Capt. Poulin will be a good staff officer at Brigade level.

Ombudsman's investigators interviewed Colonel Labbé on audiotape in the Hilton Hotel in Izmir, Turkey on September 12, 2000. A copy of Captain Poulin's allegations against Colonel Labbé was forwarded to him on July 14, 2000.

The Ombudsman's investigators also obtained a copy of the audio cassette recording of Colonel Labbé's interview with Captain Garrick and Sergeant Cavasin of the CFNIS on August 13, 1998. A transcript of this interview was prepared by this Office and reviewed by its investigators prior to their meeting with Colonel Labbé.

During his interview with the CFNIS investigators, Colonel Labbé unequivocally denied the allegations contained in Captain Poulin's memorandum dated July 9, 1996. Colonel Labbé suggested that Captain Poulin was motivated by revenge attributable to his dissatisfaction with the assessment of his performance at the CLFCSC.

Ombudsman's investigators also obtained from Captain Poulin a copy of his final report for the course he completed dated June 12, 1996. They also reviewed a copy of Captain Poulin's course records, as well as statistics for performance of the other students in the course.

In response to the above allegation, Colonel Labbé stated:

> ... I certainly have not been talking to the media nor the public ... I have never intended on him being hurt. I was simply, in my discussions with the NIS, revealing what I thought to be relevant information. Facts as I knew them without the benefit of having his course

Captain Poulin's memorandum dated July 9, 1996. Commander Moore held the rank of Lieutenant-Commander at that time.

Commander Moore is currently the Deputy Provost Marshal, CFNIS Investigation Support.

Captain Poulin's complaints regarding Commander Moore include allegations that the CFNIS investigation into inaction by Lieutenant-General Leach was not adequate and that Commander Moore failed to investigate complaints of harassment, retaliation and leaked medical information Captain Poulin brought forward.

Commander Moore responded to the relevant portion of the interim report in a memorandum dated March 28, 2001. His comments, as well as comments provided by the current CFPM in relation to the relevant portions of the interim report, have been carefully reviewed and considered and additional clarifications have been made to this final report where warranted.

Other comments by Commander Moore concerning the jurisdiction of the Ombudsman's Office in relation to military police conduct are addressed elsewhere in this report.

Allegation 1

Inadequate investigation into inaction on the part of Lieutenant-General Leach and failure to interview relevant witnesses

In his written complaint to this Office, Captain Poulin alleges:

> LCdr. Moore did not ensure that the following people were interviewed although their evidence was relevant to the NIS investigation demonstrating, once again, that his actions were also in direct violation of QR&O 107.03. It states that: "An investigation conducted pursuant to this chapter (Chapter 107) shall, as a minimum, collect all reasonably available evidence bearing on guilt or innocence of the person who is subject of the investigation."
>
> Then Maj. Jacques Tremblay — He was my immediate supervisor while I was at LFC St-Hubert. He wrote the supervisor portion of my 1995/96 PER (on behalf of Col. Coleman). I had deliberately highlighted the importance of his testimony — he had seen my memo dated July 9, 1996 — to LCdr. Moore during my NIS

> testimony to no avail. On or around August 18, 1999, now Lt.-Col. Tremblay confirmed that " ... personnel du SNE ne m'a contacté à ce sujet."
>
> Lt.-Col. Réjean Duchesneau — He replaced Col. R. Coleman during the summer of 1996. So, he too was in my chain of command. I had shown him the memo of July 9, and 15, 1996 and I had deliberately highlighted these facts to LCdr. Moore during my NIS testimony to no avail.
>
> A Kingston Whig Standard article by Rob Tripp, dated February 9, 1999, quoted RCMP Inspector Killam, who was involved in the investigation into negligence by Lt.-Gen. Leach, stating: "I don't doubt he [Lt.-Gen. Leach] read the [memo], ... After the news conference on 17 June [Trudel] tried to find the memo but it was no longer in the filing cabinet, ... I agree, that it looks like a cover-up."
>
> Despite these assertions, LCdr. Moore did not recommend any charges be laid against Lt.-Gen. Leach, to the best of my knowledge LCdr. Moore did not even initiate an investigation into the possibility of a cover-up. LCdr. Moore's handling of this investigation appears to be in direct violation of QR&O 107.03.
>
> It states that: "An investigation conducted pursuant to this chapter (Chapter 107) shall, as a minimum, collect all reasonably available evidence bearing on guilt or innocence of the person who is subject of the investigation."

On September 6, 2000, Ombudsman's investigators interviewed Commander Stephen Moore on audiotape in the 5th floor boardroom at 55 Murray Street. A copy of Captain Poulin's allegations was provided to Commander Moore prior to his interview.

The CFNIS report on its investigation into the alleged inaction by Lieutenant-General Leach concluded the following:

> Although CAPT POULIN and MAJ LAVOIE stated that they recalled discussing the 9 Jul 96 memo with LGEN LEACH he is adamant that he never saw the memo and he stated that if he had seen it, he would have taken immediate action ... There is no evidence to support criminal or service offence charges against LGEN LEACH; however, this issue should be reviewed

Assessment

I am satisfied that Lieutenant-Commander Moore did not fail to ensure individuals with information relevant to the CFNIS investigation were questioned.

I have already provided my assessment, based upon my Office's investigation, which included a review of the CFNIS investigative file, that it is highly unlikely that Captain Poulin's July 9, 1996 memorandum containing allegations of misconduct against Colonel Labbé went unseen by Lieutenant-General Leach. However, a different standard is applied by a police agency in determining whether sufficient evidence exists to warrant laying charges. Pursuant to the Ministerial Directives for my Office, I am not mandated to review this discretion or to assess whether criminal or service-related charges are warranted against any individual. I will therefore refrain from discussing or making any findings on these issues.

Allegation 2

Delayed search for July 9, 1996 memorandum within the Office of the Chief of the Land Staff

Captain Poulin alleges:

> A search for the July 9, 1996, memo was, according to documents released under ATI/Privacy conducted on or around September 14, 1998. This date represented almost three months from the time the memo had become public and the time a search was carried out in the CLS office.

In the course of their investigation, Ombudsman's investigators had access to and reviewed the entire CFNIS file related to the investigation into the allegations of inaction against Lieutenant-General Leach. The CFNIS investigation commenced on June 17, 1998. Lieutenant-General Leach was interviewed by CFNIS investigators on September 14, 1998, and a search of files at army headquarters was conducted on September 14, 1998.

The CFNIS investigators interviewed Lieutenant-Colonel Pierre Trudel, who replaced Major Lavoie as Executive Assistant to Lieutenant-General Leach in April 1997. Lieutenant-Colonel Trudel held the rank of Major at that time. While he recalled Major Lavoie showing him the memo that was held on file at that time, Lieutenant-Colonel Trudel could not recall any notation that would suggest whether Lieutenant-General Leach had read the memorandum. The notes by the CFNIS investigator record that then Major Trudel stated he had searched for the memorandum following the press conference of June 17, 1998, but it was no longer in the file.

In conducting their investigations, police must conform to legal requirements including those related to search and seizure and must also engage in a number of strategic and tactical decisions in order to ensure an investigation is conducted effectively and that the rights of individuals are respected as guaranteed under the *Canadian Charter of Rights and Freedoms*. In this particular case, Commander Moore maintains that the CFNIS delayed the search for the July 9, 1996 memorandum on the basis that there were insufficient grounds to obtain a search warrant. Ultimately the decision was made to obtain consent to search Lieutenant-General Leach's office.

Assessment

Although the search for the memorandum dated July 9, 1996 in the office of the Chief of the Land Staff was not conducted until September 14, 1998, there was other evidence available to the CFNIS to establish the existence of the memorandum and its presence within the office of the Chief of the Land Staff. I am not satisfied that any delay by the CFNIS in searching Lieutenant-General Leach's office during the course of the investigation prejudiced the outcome.

Allegation 3

Failure to pursue suggestions of interference with results of CFNIS investigations

Captain Poulin states in his written complaint:

> On or around October 21, 1998, at approximately 09:30 hrs, I spoke with LCdr. Moore and informed him about the conversation I had had with Maj. Deschênes on or about October 19, 1998. Specifically, I informed him that Maj. Deschênes had told me that he had been privy to a conversation about the relevant NIS investigations between Maj.-Gen. Penney and Gen. Baril on or about October 16, 1998.

would commence only after the conclusion of the CFNIS investigations into the allegations against Colonel Labbé and Lieutenant-General Leach.

Lieutenant-Colonel Deschênes confirmed to Ombudsman's investigators that he had informed Captain Poulin there had been a discussion involving himself, Major-General Penney and Colonel Maillet as to when the administrative inquiry would commence. As Lieutenant-Colonel Deschênes recalled, Major-General Penney wanted the inquiry to commence immediately but Lieutenant-Colonel Deschênes informed him the inquiry by the Chief of Review Services could not begin until the CFNIS investigations were completed. Lieutenant-Colonel Deschênes speculated that it was this information that Captain Poulin had characterized as an "obstruction of justice."

Lieutenant-Colonel Deschênes stated he spoke with Captain Poulin on October 29, 1998 to clarify this misunderstanding. This is corroborated by Captain Poulin's diary entry, which records this explanation.

Assessment

This allegation appears to be based on a misunderstanding that occurred between Captain Poulin and Lieutenant-Colonel Deschênes, formerly a Senior Analyst with Special Examinations and Inquiries, a section within the office of the Chief of Review Services. In my view, it is likely that Captain Poulin's perception that an obstruction of justice may have occurred was based on Lieutenant-Colonel Deschênes' comment that it would be inappropriate to commence an administrative inquiry while the CFNIS investigations were still progressing. This comment was consistent with Lieutenant-Colonel Deschênes' role within Special Examinations and Inquiries which was, in part, to ensure administrative inquiries do not encroach upon ongoing service-related or criminal investigations.

My investigators also carefully reviewed the entire contents of the CFNIS investigative files in relation to the investigations into the allegations against both Colonel Labbé and Lieutenant-General Leach. I am satisfied there was no evidence in either file to suggest that any member of the CF chain of command, including Major-General Penney and General Baril, interfered with the ongoing CFNIS investigations or influenced their conclusions.

Allegation 4

Missing time period on CFNIS videotape of interview with Captain Poulin on June 22, 1998

Captain Poulin alleges:

> On or around December 15, 1998, at approximately 13:52 hrs, I received an e-mail from Sgt. Duncan. In his e-mail, Sgt. Duncan stated: "In conversation with LCdr. Moore OC CFNIS CR he advised me that he will need more specifics as to times when the video tape was not working. I will leave it to you to take the necessary steps to satisfy those concerns."
>
> On December 16, 1998, at approximately 10:49 hrs, I wrote and submitted an e-mail to LCdr. Moore, as directed by Sgt. Duncan, giving specific details about the missing ten minutes from the videocassettes to no avail. LCdr. Moore never responded to my request.

This allegation relates to concerns that arose after Captain Poulin reviewed a copy of his videotaped statement to CFNIS investigators. Captain Poulin expressed concern that 10 minutes of interview time appeared to be missing from the interview tape and requested information in relation to this missing video footage. At the time, the Deputy Provost Marshal Professional Standards had asked Captain Poulin to provide further information to develop his military police complaints against members of the CFNIS in relation to his concerns that the investigations into the allegations against Colonel Labbé and Lieutenant-General Leach were inadequate.

On November 18, 1998, Captain Poulin initiated a complaint against then Lieutenant-Commander Moore (and other CFNIS investigators) through the Deputy Provost Marshal Professional Standards. The professional standards investigation into Captain Poulin's allegations against Commander Moore was assigned to Sergeant Bruce Duncan of the Royal Canadian Mounted Police, who was seconded to the Deputy Provost Marshal Professional Standards at that time. During his interview with the Ombudsman's investigators, Commander Moore stated that once Captain Poulin had submitted the military police complaint about him, any subsequent communications he would have with Captain Poulin were made through Sergeant Duncan.

The Ombudsman's investigators asked Commander Moore about the alleged missing portion of Captain Poulin's videotaped interview. He responded that he had reviewed the videotapes and recalls that they had experienced some technical problem with the camera but was adamant there was no part of the interview with Captain Poulin missing from the video. Commander Moore stated that he had responded to a query from Sergeant Duncan because by that time he was not dealing with Captain Poulin's case.

Ombudsman's investigators collected a copy of the videotapes held by Captain Poulin as well as a copy of the original tape held by the CFNIS. These videotapes record the CFNIS interviews conducted with Captain Poulin and his assisting officer, Lieutenant-Colonel David Moore, on June 22, 1998. The pertinent interview is identified in Captain Poulin's December 13, 1998 diary notes, in which he records that "[t]en minutes are missing from the tape between 11:40 hrs — 11:50 hrs on 22 June 1998."

My investigators viewed these videotapes. The first videotape ends at 1140 hours when CFNIS investigators Captain Garrick and then Lieutenant-Commander Moore are questioning Captain Poulin in connection with his concerns about Colonel Labbé's Performance Evaluation Report and about General Baril. Captain Poulin raises a question about the date of Colonel Labbé's Performance Evaluation Report and Lieutenant-Commander Moore responds "11 June 98" and the recording ends. The second video cassette begins at 11:50 hours with Captain Poulin's assisting officer, Lieutenant-Colonel David Moore, commenting "... during the break ..." and the interview resumes discussing General Baril.

Captain Garrick's notebook entry of this interview records "1140 hours — tape change; break taken. Back in @ 1149." Similarly, Lieutenant-Commander Moore's notebook entry of 22 June 1998 records "1145 break; 1154 recommenced interview." While there appears to be some discrepancy between the watch settings of the investigators, the interview proceedings describe the identical time interval for the break.

Assessment

While there is a 10-minute time period which is not recorded, the interval is clearly attributable to the original recording reaching the end of the video cassette — a natural place for a break in the interview. When the interview resumed 10 minutes later, the first comment on the tape is from Lieutenant-Colonel David Moore who prefaces his comments with " ... during the break ... " I am not satisfied that there was any failure on the part of the CFNIS investigators to properly record this portion of Captain Poulin's interview.

Allegation 5

Failure to commence CFNIS investigation into harassment or reprisals

Captain Poulin states in his written complaint:

> On or around July 29, 1998, during my NIS interview, I stated to the NIS investigators that I was being intimidated to the point of harassment and that I felt that there were reprisals being taken against me. One of the NIS investigators responded stating words to the effect that investigating any harassment or reprisals against me was not part of their mandate. His inaction was also in direct violation of QR&O 107.02(1).
>
> It states that: "Where a complaint is made or where there are other reasons to believe that a service offence may have been committed, an investigation should normally be conducted as soon as practical to determine whether there is sufficient grounds to justify the laying of charges."

Commander Moore stated that he discussed Captain Poulin's complaints of harassment and retaliation with him and advised him that military police policy does not allow for the investigation of harassment complaints. Commander Moore also related to Ombudsman's investigators that he informed Captain Poulin that the CFNIS was receptive to any information he wished to provide as it could prove relevant to its ongoing investigations into alleged criminal or service-related offences. Commander Moore recalled that he had spoken at length with Captain Poulin about his concerns and advised him to utilize the existing CF mechanisms in place to deal with harassment.

Commander Moore provided Ombudsman's investigators with a copy of CF Administrative Order 22-4, Security and Military Police Services, Prohibitions 12 a (i) that outlines in part that Military Police are precluded from investigating complaints of harassment.

Assessment

Lieutenant-Commander Moore's referral of Captain Poulin to existing internal CF mechanisms to deal with his complaints of harassment and retaliation was in accordance with existing CF military police policy. I am satisfied that he took adequate steps to ensure Captain Poulin was aware of the appropriate mechanisms and corresponding authority to deal with harassment complaints.

I also note from other aspects of Captain Poulin's complaint and his discussions with other members of the CF that he appeared to have been informed of his rights in relation to harassment and of the mechanisms available to him to pursue such complaints should he wish to do so. Captain Poulin's specific allegations of harassment and retaliation relating to his experiences in the workplace at the Media Liaison Office in Public Affairs are dealt with in Part Three of this report.

Allegation 6

Failure to pursue CFNIS investigation into complaint about leaked personal information

Captain Poulin states in his written complaint:

> On or around June 22, 1998, during my interview with the NIS, I reported that a senior Col. at NDHQ had leaked information regarding my medical file to several journalists and perhaps even Col. (Ret'd) M. Drapeau. No separate NIS investigation was ever conducted into this matter nor did the NIS ever inform me of any results regarding this issue (if it had been investigated at all).
>
> In contrast, the Hon A. Eggleton assured the public that BGen. Samson will " … make sure that there is a full and proper investigation conducted and that is underway … " regarding the leak of medical documents on Private (ret'd) Ann Margaret Dickey by unknown military sources on or around June 12, 1998. (Ottawa Sun, June 17, 1998, p. 8).
>
> Again, L.-Cdr. Moore's inaction was in direct violation of QR&O 107.02(1). It states that: "Where a complaint is made or where there are other reasons to believe that a service offence may have been committed, an investigation should normally be conducted as soon as

> practical to determine whether there is sufficient grounds to justify the laying of charges."

During his interview with Ombudsman's investigators on September 6, 2000, Commander Moore recalled that Captain Poulin had related information to him about being involved in a vehicle accident in April 1986.

Captain Poulin alleged that this information was leaked to members of the media by a senior officer at National Defence Headquarters (NDHQ) to provoke questions about Captain Poulin's mental stability. Captain Poulin related that he was questioned about the incident by Scott Taylor of *Esprit de Corps*, Jason Brown of the *Ottawa Citizen* and David Gamble of Southam News. Captain Poulin could not, however, refer Ombudsman's investigators to any specific media coverage or news source where the information was published.

On July 13, 2000, Ombudsman's investigators interviewed Scott Taylor in his office at Somerset Street West, Ottawa in relation to the alleged leak of the medical information about Captain Poulin's accident. Mr. Taylor said the source of the July 9, 1996 memo was anonymous but Colonel (Retired) Michel Drapeau[*] had received the call about Captain Poulin's accident.

On July 17, 2000, Ombudsman's investigators interviewed Mr. Michel Drapeau by phone about the source of the information relating to Captain Poulin's accident. Mr. Michel Drapeau stated that the source of the medical information was a colonel or above within NDHQ but, when asked, refused to identify the individual.

Captain Poulin's medical file contains information relating to treatment he received subsequent to this accident. The medical file is held at National Defence Medical Centre and Ombudsman's investigators were able to review it only after showing Captain Poulin's written consent to the Medical Records Supervisor. They did not find any evidence on this file to suggest that any personal or medical information from it had been improperly disclosed.

Information relating to Captain Poulin's involvement in a traffic accident is also contained in Captain Poulin's military personnel file. While this file is accessible to Captain Poulin's chain of command, it did not contain any medical information relating to Captain Poulin but was limited to a report of the traffic accident and a copy of a traffic citation. CF document transit receipts confirm that Captain Poulin's personnel file was forwarded from CF Support Unit (Ottawa), Personnel Support Centre on June 25, 1998 to the attention of the Administration Officer for Public Affairs. Again, no evidence was uncovered that the file had been used as a source for the disclosure of any personal information.

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[*] Since his retirement from the Canadian Forces, Michel Drapeau has contributed editorially to *Esprit de Corps* magazine and was the individual who questioned Lieutenant-General Leach about Captain Poulin's 1996 memorandum during the press conference held on June 17, 1998.

Assessment

Allegations that medical or other personal information of CF members has been leaked to the public should be treated as serious and investigated wherever possible. This is particularly true in cases where it is suggested that the information was leaked as an act of retaliation or reprisal for bringing forward a complaint. Commander Moore indicated in his response to the interim report that, during an interview on 22 June 1998, Captain Poulin told him of finding on the answering machine at his home, messages from two journalists who claimed that anonymous sources at NDHQ had told them about the traffic accident.

Commander Moore explained that no investigation was conducted into these anonymous "tips" because it was not clear that Captain Poulin was making a complaint that he felt should be investigated. Furthermore, Commander Moore believed that Captain Poulin was complaining that his information was false information, not leaked information. Commander Moore was of the view that the circulation of rumours did not constitute an offence within the mandate of the CFNIS, although he did see it as an ethical issue that could warrant further scrutiny. He advised my investigator that if Captain Poulin had been as clear to the CFNIS as he was to the Ombudsman's Office investigators that he believed an offence to have taken place, he would have been provided with a clear explanation as to why the incident was not within the mandate of the CFNIS. I accept Commander Moore's explanation. This was a case of miscommunication. Notwithstanding this explanation, Captain Poulin was left with the impression that the CFNIS was not interested in protecting him.

Ombudsman's recommendation

I therefore recommend that:

5. The Canadian Forces National Investigation Service provide to Captain Poulin, in writing, confirmation of its decision not to investigate his complaint that his personal information was leaked to the media in June 1998, including an explanation as to why this matter falls outside of the mandate of the Canadian Forces National Investigation Service.

An initial review by my office of Captain Poulin's medical and personnel files did not disclose evidence that information had been leaked. There may, however, be further investigative avenues to be pursued on this issue. As a follow-up to this recommendation, my investigators will meet with Captain Poulin to explore whether he wishes my Office to further investigate and pursue the ethical and administrative aspects of his complaint regarding improper leaking of information to the media.

G. Allegations against Lieutenant-Colonel Paul Cloutier

Captain Poulin's complaint against Lieutenant-Colonel Cloutier, the former Deputy Provost Marshal Professional Standards, stems from Captain Poulin's dissatisfaction with the way his military police complaints dated November 18 and November 30, 1998 were handled.

Ombudsman's investigators interviewed Lieutenant-Colonel Cloutier in the 5th floor boardroom of 55 Murray Street on December 8, 2000. Prior to this interview, Lieutenant-Colonel Cloutier was first contacted by telephone on September 21, 2000, while he was serving on deployment in Bosnia. During the telephone conversation, the Ombudsman's investigator informed Lieutenant-Colonel Cloutier of the allegations against him and inquired as to the best method to facilitate delivery of a copy of the allegations against him so he could be interviewed upon his return. Lieutenant-Colonel Cloutier declined the opportunity to make any comments until he returned to Canada, as he needed to review the files held in his former office. Lieutenant-Colonel Cloutier informed the investigator that he would return to work in Canada on

December 4, 2000 and would require an opportunity to review files contained in his former office before he could participate in an interview.

On December 5, 2000, the investigator contacted Lieutenant-Colonel Cloutier and a copy of the allegations was forwarded to him. Lieutenant-Colonel Cloutier subsequently confirmed receipt of the allegations and on December 7, 2000, contacted the investigator to advise that he was prepared to be interviewed.

Ombudsman's investigators also obtained a copy of the Professional Standards file that pertains to Captain Poulin's complaints. Captain Poulin's military police complaints dated November 18, 1998 were against three of the CFNIS investigators assigned to examine the allegations against Colonel Labbé and the alleged inaction of Lieutenant-General Leach. The investigators named in Captain Poulin's military police complaints are Warrant Officer MacFarlane, Captain Garrick and then Lieutenant-Commander Moore. The fourth complaint, also dated November 18, 1998 named Brigadier-General Patricia Samson, then CFPM, presumably in light of the role that she played as head of the CFNIS.

The complaint against each military police officer is examined in the section within this report that pertains to the individual named. Accordingly, this section only addresses the process followed in consideration of Captain Poulin's military police complaints and the Professional Standards section's handling of this complaint.

Captain Poulin subsequently submitted a fifth military police complaint dated November 30, 1998. This complaint named Lieutenant-Colonel Cloutier and his immediate superior, the CFPM, then Colonel Samson, for the manner in which Captain Poulin's original military police complaints dated November 18, 1998 were handled.

Lieutenant-Colonel Cloutier responded in writing to the relevant portions of the interim report on March 12, 2001. The recently appointed CFPM, Colonel Dot Cooper, also responded to this portion of the interim report in her response dated March 21, 2001. Their comments in relation to the relevant portions of the interim report have been carefully reviewed and clarifications have been made to this final report where appropriate.

Lieutenant-Colonel Cloutier's questions concerning the jurisdiction of this Office in reviewing complaints about the conduct of the Military Police and the process followed in this case, which are identical to those raised by Colonel Cooper, are dealt with elsewhere in this report.

Chronology of events surrounding handling of Captain Poulin's military police complaints

Before examining the allegations contained in Captain Poulin's complaints in relation to Lieutenant-Colonel Cloutier and the handling of the military police investigations, it is helpful to review briefly the events that took place during the consideration of the complaints and their ultimate disposition by CF authorities.

Upon receipt of Captain Poulin's complaints dated November 18, 1998, Lieutenant-Colonel Cloutier observed that two of the complaints named his direct supervisor, the CFPM, as a subject. Relying on military police policy, which requires complaints about the conduct of the CFPM to be referred to the Chief of the Defence Staff, Lieutenant-Colonel Cloutier forwarded these two complaints, together with the remaining complaints about CFNIS investigators, to the Acting Chief of the Defence Staff, on the basis that all complaints should be dealt with together since they were all submitted by the same individual and all involved the same CFNIS investigations.

The complaints that were referred to the Acting Chief of the Defence Staff were reviewed by the former Executive Assistant to the Chief of the Defence Staff, Brigadier-General Lise Mathieu, who held the rank of Colonel at that time. Then Colonel Mathieu proceeded to seek an opinion from the Office of the the Judge Advocate General regarding whether the complaints should be addressed by the Chief of the Defence Staff; in her view, the Summary of Incident portion of the complaints did not indicate any direct involvement by the CFPM.

Commander S. J. Blythe, Special Advisor to the Judge Advocate General, responded to then Colonel Mathieu in a memorandum dated November 26, 1998 with the following advice:

> It seems highly significant that, although the CFPM is listed in the Military Police Members involved portion of 2 of the complaints, there is nothing in either of the Summary of Incident portions of those complaints to suggest what she might have done wrong …
>
> The best course of action would be to ask DPM PS to contact the complainant and ask him to confirm that the complaint is indeed against the CFPM's action or

> inaction and if so, to describe what action or inaction is being complained about.
>
> If the complainant does have some action or inaction on the part of the CFPM that he wishes investigated, then I would support DPM PS' course of action.

In a letter dated December 7, 1998 addressed to Captain Poulin and each subject of his November 18, 1998 complaints, Lieutenant-Colonel Cloutier advised all parties that:

> The Chief of the Defence Staff has requested that the complainant be contacted to clarify the allegations and the subject members contained in Captain Poulin's Military Police Complaints (4) dated 18 November 1998. I have therefore directed Sgt (RCMP) Duncan NCM IC Professional Standards Investigation Section, to contact the complainant for this purpose.

Sergeant Bruce Duncan was an investigator seconded from the Royal Canadian Mounted Police to the CFNIS, who reported directly to the Deputy Provost Marshal Professional Standards, Lieutenant-Colonel Cloutier.

Ultimately, Lieutenant-Colonel Cloutier dismissed Captain Poulin's military police complaints. In his letter to Captain Poulin, Colonel Samson and General Baril, the Chief of the Defence Staff, dated January 22, 1999, Lieutenant-Colonel Cloutier stated the following:

> Based on the lack of information provided by the complainant and that he has failed or refused to provide additional information to enable an investigation to be conducted, I must classify this complaint as vexatious. Vexatious is defined as … complaint that is one of a number of unsubstantiated complaints from the same person, all of which share a common theme.

Allegation 1

Improper procedures followed for the proposed investigation of Captain Poulin's complaints

Captain Poulin states in his written complaint to the Ombudsman's Office:

> On or around November 24, 1998, Lt.-Col. Cloutier, the Deputy Provost Marshal Professional Standards wrote and submitted a letter (2120-20-2-3/TD 069-98 (DPM PS)) addressed to me. Lt.-Col. Cloutier acknowledged receipt of my four Military Police Public Complaints (dated November 18, 1998).
>
> His correspondence led me to believe that he would be involved in investigating the actions of the then Col. P. Samson, the Canadian Forces Provost Marshal, who had real and apparent authority over him.

Captain Poulin also expresses concern that:

> In this same letter (2120-20-2-3/TD 069-98 (DPM PS)) Lt.-Col. Cloutier cited Bill C-25 as an authoritative document legitimizing his section's role in investigating my NIS complaints process and to help assuage any of my concerns of conflict of interest. Bill C-25, however, had not been passed by Parliament nor had it received Royal Ascent.
>
> Bill C-25 received Royal Assent on December 10, 1998, at approximately 20:00 hrs and only on August 26, 1999 did DND/CF produce CDS 066 / CANFORGEN 075/99 stating that the provisions of Bill C-25 that pertain to military justice would become effective September 1, 1999. Perhaps of greater concern was Sgt. Duncan's own assertion on or around December 14, 1998, that Bill C-25 was being used by DPM PS although the Bill had not received the "force of law."

Lieutenant-Colonel Cloutier informed Ombudsman's investigators that, upon receipt of Captain Poulin's military police complaints dated November 18, 1998, he recognized he would be precluded from investigating two of the complaints because they listed his immediate superior, the CFPM, as a subject.

Pursuant to military police policy, Lieutenant-Colonel Cloutier submitted Captain Poulin's military police complaints to the Acting Chief of the Defence Staff, Vice-Admiral Gary Garnett, along with a letter indicating that:

> Although the CDS is only responsible for complaints about the CFPM, in this case it may be more appropriate, from ... investigative and accountability point of views, if all four complaints were investigated as one unit. This recommendation is made since all complaints are by the same individual, and they all

> relate to the same CFNIS investigation and associated press releases. As Deputy Provost Marshal Professional Standards (DPM PS) I cannot action nor respond to two of the complaints at ref. D therefore they are all forwarded for your actions/directions.

On November 24, 1998, Lieutenant-Colonel Cloutier wrote a letter to Captain Poulin, informing him of the applicable policy and procedures for the investigation of his complaints. The last line of the correspondence also advises that the complaints had been forwarded to the Acting Chief of the Defence Staff for action.

Captain Poulin also objects to the Deputy Provost Marshal's reliance upon Bill C-25 as the basis for the procedure to deal with his military police complaints in November 1998 because Bill C-25 was not given the force of law until September 1, 1999. Bill C-25 created legislative reforms relating to internal oversight of the Military Police.

In his interview with Ombudsman's investigators, Lieutenant-Colonel Cloutier indicated that the procedures for dealing with Captain Poulin's complaints were contained in the Military Police Policy Bulletin 7/98, issued on October 13, 1998. This bulletin was intended to establish internal procedures consistent with those contained in Bill C-25 to ensure that military police complaints were dealt with in accordance with due process until the provisions of Bill C-25 came into effect.

Assessment

I am satisfied that the letter written by Lieutenant-Colonel Cloutier to Captain Poulin on November 23, 1998 demonstrated that Lieutenant-Colonel Cloutier requested the office of the Chief of the Defence Staff to handle all of Captain Poulin's complaints about the CFNIS including those pertaining to the CFPM.

I am also satisfied that the decision to incorporate the spirit and intent of the provisions of Bill C-25 into military police policy prior to Bill C-25 taking legal effect was not an arbitrary or improper exercise of discretion. Although Bill C-25 had not attained the force of law at the time, there was nothing to prevent the CF from establishing internal review procedures for complaints that were intended to reflect the procedures and safeguards inherent in Bill C-25.

Allegation 2

Improper selection of proper authority to investigate Captain Poulin's military police complaints

Captain Poulin states in his written complaint to the Ombudsman's Office:

> Lt.-Col. Cloutier did not follow either VCDS 083 / CANFORGEN 100/99 dated October 16, 1997 nor 2120-20-0 (DPM PS) dated July 20, 1998. These documents listed, in priority, a series of agencies that are supposed to conduct investigations into Interim Military Police Public Complaints (par. 12). In order, they are:
>
> a. The CFNIS (criminal);
>
> b. CFNIS jointly with an appropriate civilian police force (criminal);
>
> c. Civilian police (criminal); and
>
> d. Deputy Provost Marshal Professional Standards 4 (DPM PS 4) (conduct while discharging Police duties/functions).
>
> My November 18, 1998, Interim Military Police Public complaints precluded options (a) and (b) because my complaints involved the CFNIS (criminal) as well as a member of the RCMP (Inspector D. Killam) who was part of the subject investigation into my memo dated July 9, 1996. The next logical step, according to 2120-20-0 (DPM PS) dated July 20, 1998, would have been to follow option (c) and not option (d).

Lieutenant-Colonel Cloutier further states that the document dated July 20, 1998 (2120-20-0 DPM PS), "Interim Policy on Internal Affairs Investigations and Complaints About or by Military Police" that Captain Poulin quotes in his allegation, was a draft policy. The policy regarding internal affairs investigations and complaints about or by Military Police was finalized and issued by the Chief of the Defence Staff on October 13, 1998. Lieutenant-Colonel Cloutier relied upon the latter as the basis for his decision to task Sergeant Duncan to contact Captain Poulin and obtain further information clarifying the allegations and the subjects of his complaints.

The policy issued by the office of the Chief of the Defence Staff on October 13, 1998 indicates that:

Depending on the circumstances of a complaint, one of the following organisations will normally be tasked with the investigation:

a. the Canadian Forces National Investigation Service (CFNIS) for criminal and service offences;

b. Canadian Forces National Investigation Service jointly with an appropriate civilian police force for criminal offence;

c. Civilian police for criminal offences;

d. The directorate of the Deputy Provost Marshal Professional Standards for MP professional conduct while performing MP policing duties or functions; or

e. The directorate of the Deputy Provost Marshal Professional Standards for interference in MP investigation (until the MPCC is established).

Assessment

Both the draft policy and the finalized policy dated October 13, 1998, were carefully reviewed in the preparation of this report. Neither policy dictated an order of priority for assignment of complaints. Rather, each policy appears to afford discretion as to which agency is selected, depending upon the circumstances of the complaint.

After receiving Captain Poulin's complaints back from the office of the Chief of the Defence Staff, Lieutenant-Colonel Cloutier tasked Sergeant Bruce Duncan, a Royal Canadian Mounted Police officer seconded to his staff, to obtain the required clarification from Captain Poulin. It is clear from the chronology of events, and from the direction provided by the Chief of the Defence Staff's office, that Sergeant Duncan was assigned to seek clarification of Captain Poulin's complaints, not to begin an investigation.

The intention of the direction to solicit clarification of Captain Poulin's complaints was to determine what agency should properly address Captain Poulin's complaints. As such, it is my view that Lieutenant-Colonel Cloutier's handling of Captain Poulin's complaints was not inconsistent with the military police procedures nor was it an unreasonable exercise of his professional discretion.

F2

Allegation 3

Failure to grant Captain Poulin's request to delay military police complaints proceedings and dismissal of these complaints

Captain Poulin states in his written complaint to the Ombudsman's Office:

> On or around December 7, 1998, Lt.-Col. Cloutier wrote and submitted a memo (2120-20-2-3/TD 069-98 (DPM PS) addressed to me stating: "The complainant (Capt. Poulin) has requested access to the video tapes of his interviews with CFNIS CR. Once these tapes have been provided by the OC CFNIS CR arrangements will be made for a meeting." This understanding was later contradicted by Lt.-Col. Cloutier's statement on or around December 10, 1998.
>
> On or around December 10, 1998, at approximately 15:36hrs, I received an info copy of Lt.-Col. Cloutier's robust and intimidating e-mail from him to Sgt. Duncan concerning my Interim Military Police Public Complaints and my desire to seek legal counsel at public expense.
>
> Essentially, Lt.-Col. Cloutier's e-mail ordered Sgt. Duncan to "Call Capt. Poulin and tell him that I have read his e-mail and find it unacceptable ... Capt. Poulin has been provided with the material he requested to help him clarify his complaints; now we must proceed with the MP complaint process."

During his interview with Ombudsman's investigators, Lieutenant-Colonel Cloutier related that Royal Canadian Mounted Police officer Sergeant Duncan was assigned to handle Captain Poulin's complaints, which required further clarification before the matter could be assigned for investigation. Lieutenant-Colonel Cloutier recalled that Sergeant Duncan had informed him that Captain Poulin seemed to be having difficulties articulating clearly what and whom he wished to complain about without the help of copies of some videotapes recorded during the earlier investigations by the CFNIS. Lieutenant-Colonel Cloutier stated he was aware Sergeant Duncan expedited the provision of the copies of the videotapes to Captain Poulin. Captain Poulin's diary entry for December 7, 1998 confirms that he had been supplied with copies of his video testimony as requested so he could articulate his complaints. Notes taken by Sergeant Duncan, plus copies of many e-mails between Sergeant Duncan and Captain Poulin, record Sergeant Duncan's extensive efforts to have Captain Poulin clarify his complaints.

On December 10, 1998, Captain Poulin sent an e-mail to Sergeant Duncan, indicating as follows:

> ... I have also received another memorandum from the CRS dated 8 December 1998. As a result, I am requesting permission from CRS to instruct [a lawyer] at public expense. Seen from this perspective, I am sure you understand that I wish to wait until I have spoken with my lawyer before moving forward with the CRS administrative investigation or your investigation into my complaints.

When Sergeant Duncan brought this information to the attention of Lieutenant-Colonel Cloutier, Lieutenant-Colonel Cloutier responded with what Captain Poulin describes as a "robust and intimidating email." It stated:

> Call Capt. Poulin and tell him that I have read his email and find it unacceptable. Your meeting with him is not to conduct an investigation but rather it is for him to clarify and for us to understand his four and perhaps his fifth complaints he has made against the Military Police. Once these complaints have been clearly articulated and they are understood by us, a decision [will] be made about the subsequent investigation.
>
> Captain Poulin has been provided with the material he requested to help him in clarifying his complaints; now we must proceed with the MP complaint process. To help Capt. Poulin understand the need to proceed immediately, explain to him the time lines we must work under as directed by Bill C-25. There is now a series of people who have been informed, as required by Bill C-25 that complaints have been lodged against them. They too are entitled to a speedy and complete investigation.

Lieutenant-Colonel Cloutier also stated that at the time they were:

> ... following Bill C-25 ... we have to be transparent and we have to be accountable ... We also must do everything we can to help the complainant but we must also ensure that the subject of the investigation of the complaints do not become victims themselves.

Lieutenant-Colonel Cloutier related to Ombudsman's investigators that, although Bill C-25 had not yet been passed, the CF had adopted a policy effective October 13, 1998 that mirrored the procedures outlined in Section 250 of Bill C-25. His decision to have Sergeant Duncan inform Captain Poulin that his request for a delay was not granted and that his complaints would proceed, was premised on the spirit and intent of Bill C-25. These procedures emphasized the need to deal with complaints and to inform complainants and subjects of complaints of the results as soon as practicable.

As previously noted, Lieutenant-Colonel Cloutier dismissed Captain Poulin's military police complaints as "vexatious" based on the lack of clarification from Captain Poulin to enable an investigation to be conducted. His decision was related to Captain Poulin in his letter dated January 22, 1999.

Assessment

My investigators reviewed copies of Captain Poulin's complaints dated November 18 and 30, 1998. From reading Captain Poulin's Summary of Incident and the specific allegations listed against the military police members, it is not evident what action or omission Captain Poulin is complaining about. It should be noted that Captain Poulin was not an unsophisticated complainant and clearly had detailed knowledge of the matters investigated by the CFNIS. I am satisfied that the request for clarification of the allegations was not unreasonable, particularly in light of the nature and complexity of the incidents giving rise to them and the seriousness of the allegations themselves.

It is clear from the evidence my investigators collected that Sergeant Duncan attempted to facilitate Captain Poulin's response to the request for clarification of his allegations on behalf of the Deputy Provost Marshal Professional Standards. It should be noted that the purpose of the process at that stage was to obtain clarification of the allegations so the proper decisions could made as to how the investigation should proceed and who should be tasked with the investigation, pursuant to the recommendations of the office of the Chief of the Defence Staff. Captain Poulin sought to have this process put on hold.

It is clear from the evidence reviewed that the complaints had not proceeded to a full investigation and that Captain Poulin was not being asked to respond to or participate in a formal investigation at that stage. I am not satisfied that Captain Poulin required legal representation to respond to the request for clarification. It is also noteworthy that Captain Poulin's request for funding for legal representation from the CF was not ultimately granted.

I am satisfied that Lieutenant-Colonel Cloutier's denial of Captain Poulin's request to delay moving forward with his military police complaints was not an unreasonable exercise of his discretion in this circumstance, particularly in light of the desire to deal with such complaints in a timely fashion, to the benefit of all parties.

After instructing Sergeant Duncan to inform Captain Poulin that the complaints process would proceed, Lieutenant-Colonel Cloutier ultimately dismissed Captain Poulin's complaints as "vexatious" based on the lack of further clarification from Captain Poulin to enable an investigation to be conducted. Lieutenant-Colonel Cloutier indicates in his dismissal of the complaints that vexatious is defined "as a complaint that is one of a number of unsubstantiated complaints from the same person, all of which share a common theme."

It should be noted that, in the interim military police policy on complaints dated 13 October 1998, the term "vexatious" was given the specific meaning that is described in the notice rejecting Captain Poulin's complaints. Moreover, that definition provides the basis for summary dismissal. As indicated, the discretion to summarily reject Captain Poulin's complaints of 18 November 1998 was not inappropriate for the reason provided; that is, Captain Poulin had not provided the specific information sought. It was not evident what action Captain Poulin was complaining about. Efforts made to obtain further particulars failed to produce results. Nevertheless, it is my view that the use of the term "vexatious," even if it is employed consistent with military police policy and even if it is defined in the notice, was inflammatory and counterproductive. In the interests of defusing a volatile situation, I recommended in my interim report that the Deputy Provost Marshal Professional Standards re-issue the official letter dismissing Captain Poulin's military police complaints removing reference to the word "vexatious." Both Lieutenant-Colonel Cloutier and the newly appointed CFPM, Colonel Cooper, declined to accept that recommendation.

Notwithstanding their opposition, it is my view that the use of the term "vexatious" to describe Captain Poulin's complaints could serve only to exacerbate the frustration that Captain Poulin had experienced from the outset in having his initial complaints considered. That term, in its ordinary use, connotes or suggests that the complaints were not serious ones but were intended to annoy and harass the subjects of the complaints.

"Vexatious" is defined by *Merriam-Webster's Dictionary of Law*, 1996 as "lacking a sufficient ground and serving only to annoy or harass when viewed objectively." The *Concise Oxford Dictionary* defines "vexatious" as "causing annoyance or worry." Accordingly, despite the definition provided by Lieutenant-Colonel Cloutier in his letter to Captain Poulin, the term "vexatious" creates the impression that Captain Poulin put forward the matter, not only with insufficient information, but for no other purpose than to annoy or harass.

There is no basis for concluding that Captain Poulin was simply intending to harass or annoy. He believed that he had grounds to complain, yet he acted as he did because he had lost faith in the complaints process. While Lieutenant-Colonel Cloutier cannot be faulted for adopting the language approved in the interim military police policy, it is nonetheless a provocative term which distorts the actual basis for dismissing the complaints in this instance and is more counterproductive than useful.

In the interests of attempting to reduce any stigma that may attach to Captain Poulin through the use of this term, bearing in mind the degree of frustration and difficulty he endured as a direct result of the failure by CF authorities to treat his initial complaints appropriately, it is my view that, whether or not the term "vexatious" was used in a technically correct fashion without the intention of slurring Captain Poulin, much could be gained by removing the term from the written decision to dismiss the military police complaints. Without that word, the record shows that the complaints were rejected properly as never having been sufficiently made. Because of its strong connotation, the inclusion of the label "vexatious" obscures more than it enlightens and needlessly stigmatizes Captain Poulin.

Ombudsman's recommendation

I therefore recommend that:

6. The official letter dismissing Captain Poulin's professional standards complaints should be reissued removing the reference to "vexatious."

Allegation 4

Improper role and interference in military police complaints dated November 18 and November 30, 1998 and in allegations of collusion and obstruction of justice contained in November 18, 1998 military police complaint

Captain Poulin states in his written complaint to the Ombudsman's Office:

> On or around December 11, 1998, Lt.-Col. Cloutier wrote and submitted a memo (2120-20-2-3/TD 075-98 (DPM PS) addressed to me acknowledging receipt of my November 30, 1998, Interim Military Police Public Complaint against him and his immediate superior the then Col. Samson. In this letter, he stated he "... will delay forwarding this complaint to the CDS pending our upcoming meeting where I hope to receive further clarification of four other MP Public Complaints (dated November 18, 1998)." This procedure was contrary to the precedent set with my Interim Military Police Public Complaints dated November 18, 1998 and Lt.-Col. Cloutier's letter acknowledging receipt of the complaints and the procedure he was following.
>
> Indeed, on or around November 24, 1998, Lt.-Col. P. Cloutier, the Deputy Provost Marshal Professional Standards wrote and submitted a letter (2120-20-2-3/TD 069-98 (DPM PS)) addressed to me. Lt.-Col. Cloutier acknowledged receipt of my four Military Police Public Complaints (dated November 18, 1998).
>
> His correspondence led me to believe that he would be involved in investigating the actions of the then Col. Samson, the Canadian Forces Provost Marshal, who had real and apparent authority over him. Lt.-Col. Cloutier also indicated that he had "provided the A/CDS with a copy of references A (My Interim Military Police Public Complaints, dated November 18, 1998) through C, for his action."
>
> By interfering in my Interim Military Police Public Complaints Lt.-Col. Cloutier was trying to stop me from blowing the whistle on high level incompetence regarding the NIS investigations into my allegations contained in my July 9, and 15, 1996, memos. Lt.-Col. Cloutier's actions were also in direct violation of QR&O 107.02(1).

> It states that: "Where a complaint is made or where there are other reasons to believe that a service offence may have been committed, an investigation should normally conducted as soon as practical to determine whether there is sufficient grounds to justify the laying of charges." This assertion is further corroborated in memo 2120-20-0 (DPM PS) dated July 20, 1998 wherein: "Subject to any attempts at informal resolution, the DPM PS shall investigate a conduct complaint as soon as practicable." In my case, there was no formal investigation.

Captain Poulin further states:

> On or around November 18, 1998, I submitted an Interim Military Police Public Complaint alluding to collusion and obstruction of justice on the part of some NIS investigators. According to memo 2120-4-0 (DPM PS 4) dated October 13, 1998, "obstruction" is a "... criminal offence and which must be investigated by the Canadian Forces National Investigative Service ..." and not the Directorate of the Deputy Provost Marshal Professional Standards (DPM PS). In my case, however, Lt.-Col. Cloutier took it upon himself to have his staff "flush out" this complaint.

Ombudsman's investigators confirmed with Lieutenant-Colonel Cloutier that the letter referred to by Captain Poulin in the above-noted portion of his written complaint was authored by Sergeant Duncan who was seconded from the Royal Canadian Mounted Police to the Deputy Provost Marshal Professional Standards. Sergeant Duncan reported directly to Lieutenant-Colonel Cloutier, the Deputy Provost Marshal Professional Standards.

The letter acknowledged receipt of Captain Poulin's additional military police complaints dated 30 November, 1998 against Lieutenant-Colonel Cloutier, the Deputy Provost Marshal Professional Standards, as well as the CFPM. Sergeant Duncan also related some general, explanatory information to Captain Poulin in response to the allegations contained in his November 30, 1998 complaints.

The procedure being followed at this point was the same as that followed in relation to Captain Poulin's November 18, 1998 complaints against the CFNIS investigators and the CFPM. Lieutenant-Colonel Cloutier tasked Sergeant Duncan to have Captain Poulin provide clarification of his complaints and the subjects. This step was deemed necessary by the office of the Chief of the Defence Staff on the advice of the Judge Advocate General to determine the proper subjects of the complaints, how the investigation should proceed and the appropriate agency for investigating the complaints.

Clarification was also sought for Captain Poulin's allegations of obstruction of justice and collusion that appeared to potentially involve CFNIS investigator Commander Stephen Moore; Lieutenant-Colonel Deschênes, a military police officer who was employed as Senior Analyst within the Office of the Chief of Review Services; Major-General Penney, the Chief of Review Services; and General Baril, the Chief of the Defence Staff. (The circumstances giving rise to this allegation are described in the section of this report dealing with allegations against Commander Stephen Moore). This complaint was submitted by Captain Poulin as part of his November 18, 1998 military police complaints and was submitted to the Chief of the Defence Staff together with his other complaints of the same date, for reasons that have already been reviewed in this report.

Lieutenant-Colonel Cloutier related to Ombudsman's investigators that Sergeant Duncan, a Royal Canadian Mounted Police officer, was given the task of obtaining clarification from Captain Poulin on the specifics of his allegations and the subjects of his complaints as he felt that:

> ... it was totally inappropriate for me to look and to be involved in an investigation against myself. Sergeant Duncan, that's why we had a member of the RCMP attached to the section; so it would give us that flexibility if required. And he had the mandate from me, and I had a pool of individuals that we had identified, external to the Canadian Forces, but investigators, former RCMP officers, former Gatineau officers, former OPP officers ... who had agreed that they would work for us if we needed them on contract.

Lieutenant-Colonel Cloutier further provided that:

> I had, and continue to have today, complete confidence in Sergeant Duncan. [An] extremely, extremely fair and extremely competent individual. We had already discussed long before this particular incident took place, what will happen if somebody complains against me? What will happen if somebody complains against the Provost Marshal? What will happen if somebody complains against you, Sergeant Duncan? How are we going to handle this? So he already knew how to handle it. He already knew that

> if something came against me, it would go to him and then he was handling it completely. He already knew of our pool of [outside] investigators. He already knew of the budget and how to establish a contract and so on. So, it was all in his hands, until ... Bill C-25 got passed and then it was ... it would be very simple. Then it would [be submitted] to the MP Complaints Commission ... but until it was stood up, we had to have a process. Sergeant Duncan was very, very well aware.

Assessment

Although Sergeant Duncan was a member of the Royal Canadian Mounted Police, as a member on secondment to the CFNIS and assigned to the Deputy Provost Marshal Professional Standards, I cannot agree with the suggestion that he should be considered to provide the same degree of real and perceived independence as an investigator who is outside of the organization. In dealing with this matter, Sergeant Duncan was not acting in his capacity as a Royal Canadian Mounted Police officer, but was directly accountable to the CF for his handling of the matter.

All the same, it must be considered that Sergeant Duncan's role in this case was limited to his efforts to obtain clarification from Captain Poulin as to the specifics and subjects of his complaints so they could be investigated. It is clear from the information provided to my investigators that no final decision had been taken by Professional Standards or the office of the Chief of the Defence Staff as to what agency should properly investigate the complaints. In light of these considerations, I am satisfied there was not an improper exercise of discretion on the part of Lieutenant-Colonel Cloutier or Sergeant Duncan in dealing with Captain Poulin's complaints.

H. Allegations against Brigadier-General Patricia Samson

Brigadier-General Samson was the CFPM when Captain Poulin's memorandum dated July 9, 1996 became public on June 17, 1998, and held the rank of Colonel at that time. As CFPM, then Colonel Samson was the Commanding Officer of the CFNIS throughout their investigations of the allegations against Colonel Labbé and the alleged inaction of Lieutenant-General Leach. Some of the allegations against Brigadier-General Samson that were contained in Captain Poulin's written complaint to the Ombudsman's Office consisted of allegations of actions or omissions on the part of Brigadier-General Samson's subordinate staff. These allegations are dealt with in the sections pertaining to the individual, with reference to Brigadier-General Samson's responsibilities and obligations as the Commanding Officer of the CFNIS and as the CFPM wherever appropriate.

Brigadier-General Samson responded to the relevant sections of the interim report in writing on March 14, 2000. Brigadier-General Samson's response, as well as the relevant responses from Colonel Cooper, the current CFPM, and General Baril, the Chief of the Defence Staff, have been carefully reviewed and clarifications added to this final report where appropriate.

Allegation 1

Receipt of information from Lieutenant-General Leach relating to allegations against him, outside of the normal investigative process

Captain Poulin states in his written complaint to the Ombudsman's Office:

> On or around June 17, 1998, at approximately 17:35 hrs the then Col. Samson opened a letter from Lt.-Gen. Leach. It was his hand-written statement relating to his involvement with the subject memo. Her actions were in direct violation of procedure insofar as:
>
> She was made privy to information that had by passed the normal investigative process (the values of such testimony, other than to taint the credibility of the NIS investigative process as well as the person holding the office of Provost Marshal is unclear).
>
> She was made privy to information before it could be refuted or corroborated by the NIS investigative team (hence the potential danger of bias).
>
> She was made privy to his testimony on June 17, 1998, before the internal tasking order not only to launch the relevant NIS investigations but also before setting the limiting parameters of these investigations on June 18, 1998 (date CFNIS CR tasked).

> In addition to the irregularity of procedure and negligence allegations against the then Col. Samson, these events also suggest that senior officers may still have a role in military justice investigations and influenced its outcome.

This allegation against then Colonel Samson stems from the existence of a hand-written memorandum Lieutenant-General Leach wrote and submitted to her following events at Lieutenant-General Leach's press conference on June 17, 1998, at which Captain Poulin's July 9, 1996 memo was made public.

Lieutenant-General Leach's memorandum contained a lengthy description of his thoughts and his version of the events relating to the allegations that he had been the recipient of Captain Poulin's memorandum dated July 9, 1996 and failed to take action in response. A copy of the memo written by Lieutenant-General Leach and delivered to Brigadier-General Samson is attached to this report as Appendix IV. At the end of the memorandum, after a lengthy review of his recollection of the events as they unfolded, Lieutenant-General Leach indicates, "I am passing this hand-written note to the CFPM immediately. I will reflect tonight and if any other thoughts come to mind, I will add an addendum." At the end of the memo he states, "for the CFPM, I request that you take whatever follow up action is necessary, as soon as you can."

Brigadier-General Samson was interviewed by my investigators on audiotape in her office at 101 Colonel By Drive on October 12, 2000. A copy of Captain Poulin's allegations against her was provided to Brigadier-General Samson prior to this interview.

Brigadier-General Samson acknowledged receiving Lieutenant-General Leach's memorandum and she indicated the following to Ombudsman's investigators:

> ... I am the Commanding Officer of the National Investigation Service. If someone writes me a letter, I open it. I read it. The people that do the taskings for me are the Deputy Provost Marshal, NIS Support. I'm the one who tasks the investigations. Therefore, there is no bypass of the normal process. That is the process. Am I privy to information? I'm privy to all the information on every investigation that is ever done by the NIS. There is nothing irregular about this. The same thing as the Chief of Police — he'd be privy to all the information. I was privy to the information before the internal tasking order; if I wasn't there wouldn't have been a tasking order ... There was something in

> here about, "before setting the limiting parameters." We don't set limiting parameters. We task investigations and investigators go out and investigate. There [would have been] irregularity of procedure if I had not done this.

Brigadier-General Samson confirmed in her response to the interim report that from a personal perspective she "was very comfortable that there was no hidden intent or personal agenda behind Lt-Gen. Leach's memorandum."

Commander Stephen Moore was Officer Commanding the CFNIS, Central Region and held the rank of Lieutenant-Commander at that time. He was assigned to lead the investigation concerning whether Lieutenant-General Leach had received Captain Poulin's memorandum and failed to take action. Then Lieutenant-Commander Moore's case notebook entry records that he was tasked to conduct the investigation prior to Lieutenant-General Leach preparing the statement that he forwarded to the CFPM. The case notebook entry records:

> At 1455 hrs 17/6/98 I attended a (meeting) with CFPM and Maj. Dixon. CFPM gave me two copies of memo 9 Jul 96 addressed to DComd LFCHQ authored by Capt. Poulin. CFPM stated that they were received by Lieutenant-General Leach from Scott Taylor.

The text of Lieutenant-General Leach's hand-written memorandum suggests it was not completed until some hours after the CFPM had tasked Commander Moore to investigate.

Assessment

Lieutenant-General Leach's memorandum does not ask for anything improper to be done. It does not expressly invite favour nor does it ask for special treatment. Indeed, at least in part, it is a request for an investigation. It ends with a request that Captain Poulin's allegation relating to his own conduct be referred to the CFPM for follow-up action.

It is apparent, however, from the information in the file of the CFNIS, that by the time that Lieutenant-General Leach's letter was drafted, investigations had already been tasked. In his memo, Lieutenant-General Leach notes that he had already reported the incident to the Acting Chief of the Defence Staff. Without in any way suggesting that Lieutenant-General Leach's request for an investigation in his memorandum to the CFPM was not sincere, it is important to note that the memorandum submitted by Lieutenant-General Leach goes beyond merely requesting an investigation. It also contains Lieutenant-General Leach's personal version of events leading up to the release of Captain Poulin's memorandum of July 9, 1996. It asserts his position that he does not recall ever having seen that memorandum. It also contains comments by Lieutenant-General Leach in relation to personal matters regarding Captain Poulin's posting and reimbursement of educational expenses that Lieutenant-General Leach claimed he had assisted Captain Poulin in resolving. It is not clear what bearing or relevance these issues were expected to have on the CFNIS investigations into allegations against Lieutenant-General Leach and Colonel Labbé, although they do create the impression that Lieutenant-General Leach was attempting to demonstrate a history of having dealt fairly with Captain Poulin so that his conduct in this case would be understood in that light. Without question, this letter was not simply an invitation by Lieutenant-General Leach to encourage an investigation so that the matter could be cleared up. It was also an attempt by Lieutenant-General Leach to record aspects of his side of the event. There are two things that are troubling about this. First, the letter is sent directly to the CFPM, not to the CFNIS or the investigator assigned to lead the investigation. It was addressed directly to the CFPM to be delivered by hand. Secondly, Lieutenant-General Leach's note ends with these words:

> PS. The original copy this handwritten memo is for the Canadian Forces Provost Marshal. I have retained a copy for myself. No other copies have been done.

Considered together, these features of the letter present real and obvious concerns relating to the appearance of impartiality of the CFNIS investigation.

Before continuing, it is imperative to first underscore how essential both impartiality and the appearance of impartiality are to CFNIS Service investigations. The independence of any investigation is essential to the integrity of its outcome. So too is the appearance of impartiality. If an investigative organization is seen to be vulnerable to undue influence, the results it produces will not be trusted. Both impartiality and the appearance of impartiality are particularly important for the credibility of the CFNIS, because it is responsible for investigating matters in which persons high in the chain of command often have a personal or professional interest. The possibility, or at least the appearance, of undue influence is an omnipresent reality as a result of the very existence of a command structure and the varying rank and status of the individuals involved in an investigation. For that reason, the office of the CFPM has been established as an independent office, albeit an office that remains part of the CF, and a strong ethic of non-interference in investigations by the CFNIS has developed within the CF. The paramount importance of protecting the independence of the CFNIS is also the reason for the establishment of an independent Military Police Complaints Commission. All considered, there is an overarching interest on everyone's behalf in ensuring that independence is never compromised and that impartiality, as well as the appearance of impartiality, is preserved.

In my opinion, it is clear that there is unquestionably a problem for the appearance of impartiality when a Lieutenant-General who is the subject of an allegation that is under investigation communicates matters of substance relating to the complaint directly to the CFPM, particularly when the letter ends with the notation that "no other copies have been done." This kind of action, however innocent it may seem in the minds of both the sender and the receiver, can have no other effect than to call into question respect for the ethic of non-interference in and independence of the CFNIS.

It is important that I be clear here. I am not finding that Lieutenant-General Leach was attempting to interfere improperly in the investigation in which he was implicated. Nor am I suggesting that Brigadier-General Samson is personally vulnerable to undue influence. I am certain that is not the case. This Office reviewed the entire CFNIS file as it related to the investigation into the inaction by Lieutenant-General Leach in response to Captain Poulin's memorandum, as well as the record of Lieutenant-General Leach's statement of September 14, 1998 to CFNIS investigators. No evidence was found to suggest that the investigation or its outcome were affected in any way by the memorandum Lieutenant-General Leach wrote. Nevertheless, the action of a high-ranking officer sending a personal, hand-delivered, hand-written communication about a matter being investigated, in which he tells his side of the story and on which there is a notation that he has the only other copy, to the CFPM can only shake the confidence those who learn of this action have placed in the impartiality and independence of the investigation. Imagine, for a moment, a member of the federal Cabinet writing directly to the Commissioner of the Royal Canadian Mounted Police with information about an investigation into his or her conduct and noting in the letter that no other copies of the document have been circulated. I am satisfied that this episode had no effect on the investigation. I am also not satisfied that Lieutenant-General Leach ever intended the letter to have such an effect. However, the revelation that this form of communication took place will, in some measure, imperil public confidence in the CF and erode members' trust in the leadership — that is, unless clear steps are taken, not to proclaim the innocence of this kind of practice, but rather to recognize the danger it represents and to ensure that it does not happen again. It is imperative, in my opinion, that the CF have procedural safeguards in place to prevent actions by any persons, especially high-ranking members of the chain of command, that could even be perceived as attempts to influence the course of an investigation.

I go even farther. It is not befitting the principles related to protecting the appearance of impartiality for high-ranking officers to refer complaints about their own conduct to the CFNIS for investigation. Even if the sole function of Lieutenant-General Leach's memorandum of June 17, 1998 was to invite an investigation, without recording potentially exculpatory information, the action still should not have occurred.

The current CFPM, Colonel Dot Cooper, in her response to my interim report, did not accept that the degree of concern I expressed there, and also express in this final report, is warranted. She noted that police routinely approach suspects to obtain their side of the allegation, often going to great lengths to get a statement from an accused, and that suspects must be free to present their side of the story, regardless of their rank or position in the service. She advises that "[in] this respect, it may be argued that unfettered access to the police helps to ensure that the investigation will be conducted fairly." While there is truth in these comments, what needs to be appreciated is that this is not a case of an investigator approaching a 'suspect' for a statement, or a 'suspect' volunteering information to the investigator. Context cannot be forgotten. This is a senior officer writing to the head of an investigative service that is part of the CF within which he holds his rank. This happened well "outside of the normal investigative process." Indeed, altogether apart from this missive, Lieutenant-General Leach was interviewed in this case and did provide a statement to the CFNIS investigators, as part of their investigation.

It should be obvious that it is not the purpose of my recommendations to advise adoption of policies that would thwart effective military police investigations. The purpose is to ensure that the CFPM and the CFNIS is protected from even the perception of undue influence.

In her response to my interim report, the current CFPM also notes that "the solution to undue influence" lies in institutional safeguards, notably the independent Military Police Complaints Commission. This safeguard is undoubtedly part of the solution. The first thing that needs to be noted, however, is that under the *National Defence Act*, complaints related to interference with an investigation can only be referred to that body by a member of the Military Police, and only in cases where the conduct in question took place after December 1, 1999. Moreover, it seems unduly restrictive, even counterproductive, to think in terms of "the" solution. No doubt the significant contribution of the Military Police Complaints Commission to ensuring the independence of investigations can be complemented and enhanced by other measures, including educating members of the chain of command about situations in which direct communications with fellow officers may be improper or may be perceived as the exercise of undue influence and setting up a milieu that prevents such actions. This assurance is most effectively accomplished, not through after-the-fact responses to complainants, but by strong direction from the Chief of the Defence Staff to those under his command to avoid engaging in the kind of actions that occurred in this case.

Ombudsman's recommendations

7. **The Chief of the Defence Staff should ensure that appropriate directives are put into place to prevent actions by Canadian Forces members that constitute, or may be perceived by a reasonable person to constitute, attempts to influence the course of military police investigations outside of the normal investigative process.**

8. **The Chief of the Defence Staff should issue the appropriate directives to ensure that, where incidents are referred to the Canadian Forces Provost Marshal for investigation, the referral comes from persons within the chain of command who are not identified as potential subjects of any allegations to be investigated.**

The Chief of the Defence Staff indicated in his response to my interim report that these recommendations fall within the purview of the CFPM and "out of deference to the Accountability Framework of that office, I have not dealt with these recommendations."

With respect to the Chief of the Defence Staff, I cannot agree. Rather than encouraging the Chief of the Defence Staff to do anything that would interfere with the independence of the CFPM, I am encouraging the development of mechanisms in order to prevent such interference. Indeed, I am recommending directives to CF members in general, not to the CFPM or to members of the CFNIS. I am simply calling on the Chief of the Defence Staff to use his authority over CF members to complement and support the independence and impartiality of the CFNIS by directing CF members, including those high in the chain of command, not to engage in activity that could be perceived as influencing the course of an investigation. It is important to appreciate that I am not making a recommendation to the Chief of the Defence Staff to take any action with respect to any specific, ongoing investigation. I am simply recommending that directives be issued to establish matters of general policy.

Leaving aside questions of jurisdiction for the moment, it is not the most effective way to prevent conduct that may jeopardize the appearance of impartiality of a CFNIS investigation to wait for an act of interference to occur and then to address it by instituting some formal process. The best way to prevent such conduct is to give strong directives that will help educate CF members about proper and improper conduct so that such instances can be avoided in the first place. In this instance, it is unlikely that Lieutenant-General Leach would have sent his letter in the first place had the Chief of the Defence Staff issued a directive such as the one I recommend. He would have been more attuned to the sensitivity of this issue and would probably have chosen a more appropriate course of action. This preventative approach would have avoided the perception that was reasonably created in the eyes of Captain Poulin that there was a behind-the-scenes attempt to influence this high-profile and very sensitive investigation.

I turn to the jurisdictional question. I feel the need to address the comment the Chief of the Defence Staff made in his response to my interim report that he was declining to follow my recommendations "out of deference to the Accountability Framework of that office." Ironically, the Accountability Framework not only does not prevent the implementation of these recommendations, it in fact encourages if not mandates the development of directives like those I am recommending.

As its name suggests, the Accountability Framework is not unlike many statutory provisions that exist to make those who provide civilian police services accountable without subjecting them to improper political or executive interference. For example, under the *Police Services Act* of Ontario, a Police Services Board has the power to establish policies for the effective management of the police forces, and the Solicitor General of the province is empowered to issue directives and guidelines to police chiefs to enable those policies to be implemented. The qualifier is that a Police Services Board cannot direct a Chief of Police how to deal with specific operational decisions or the day-to-day operation of the police force. The term day-to-day operation refers to specific policing strategies and decisions as they relate to particular cases, not to general policy directives.

Similarly, the Accountability Framework for the CF provides for the accountability of the CFPM. Like the *Police Services Act* of Ontario, it prevents two kinds of direction. First, it prevents any attempt to direct the CFPM on specific operational decisions of an investigative nature. Second, it prevents senior leadership's involvement in ongoing investigations, other than to receive information necessary for management decision making. It is important to appreciate that the recommendations that I am making do not do either of these things. They do not direct the CFPM on specific operational decisions of an investigative nature. Nor do they involve individuals in any ongoing investigations.

There is, therefore, nothing in the Accountability Framework, either in its terms or its spirit, to prevent implementation of the recommendations that I am making. Indeed, there is much in the Accountability Framework to support what I am suggesting.

The Accountability Framework provides expressly that the Vice Chief of the Defence Staff "will ensure that education and training are provided to the chain of command and the members of the military police to assist in understanding their respective roles" (paragraph 6(a) Operational Primacy Environment). That, of course, is exactly the function that I am requesting the Chief of the Defence Staff to perform in Recommendations 7 and 8, namely to define the respective roles of members of the chain of command in matters to do with investigations. Indeed, the framework further provides that:

> To ensure that information sharing is carried out in a way which supports the primacy of operations and investigative integrity, the Vice Chief of the Defence Staff will facilitate the chain of command and the military police working together to ensure a shared understanding of the respective responsibilities and obligations with respect to information sharing.

An improper mode of sharing information in a way that undermines the investigative integrity of the CFNIS precisely describes the incident in this case that has prompted me to make Recommendation 7.

As noted above, and this is the key point, the recommendations I am making do not run afoul of the Accountability Framework for the simple and obvious reason that they are not directed at the CFPM. They are directed at the members of the CF.

As an academic but illustrative exercise, I want to make the point that the Chief of the Defence Staff could go even further than I have asked him to in this report. He could craft directives to the CFPM herself to support the objectives of the Accountability Framework. For example, through the office of the Vice Chief of the Defence Staff, he could direct the CFPM not to engage in any communications outside of the normal course of an investigation with any member of the chain of command who is under investigation. The Accountability Framework provides:

> The Vice Chief of the Defence Staff may give orders and general direction to the Canadian Forces Provost Marshal to ensure professional and effective delivery of policing services. The Canadian Forces Provost Marshal is accountable to the Vice Chief of the Defence Staff for maintaining police standards which are consistent with those of other police agencies.
>
> The orders and general direction of the Vice Chief of the Defence Staff may include matters of public, Departmental, Canadian Forces and strategic military police policy, ethical standards and requirements to comply with the laws of Canada.

It would not have been at all inconsistent with the provisions of the Accountability Framework if I had recommended in this report that the Chief of the Defence Staff give such an order or general direction to the CFPM to ensure professional and effective delivery of policing services with respect to avoiding the appearance of improper influence. It would have been an order and direction that captured the merits of the Accountability Framework.

Allegation 2

Misleading press release regarding the results of CFNIS investigation into allegations of sexual misconduct against Colonel Serge Labbé

Captain Poulin states in his written complaint:

> One part of the CFPM-98.044 news release stated that: "The CFNIS has determined that there is no evidence to support allegations of sexual misconduct made against Colonel Serge Labbé ... " This assertion neglected to state that both I and another witness had corroborated some of the allegations I had made.
>
> This assertion also conveniently omitted other portions of the investigation that proved well founded (i.e. the drinking on the bus). The then Col. Samson did not correct the said earlier News Release although she knew that it omitted well-founded portions of the investigation. Instead, she authorised the subject news release.
>
> Her role in approving this document is confirmed in Capt. Bissonnette's statement on or around October 15, 1998, in the Kingston Whig-Standard that the military investigation into my memo dated July 9, 1996 was "completed, (but) there's still a few touch-ups to do." Capt. Bissonnette added further "The Provost-Marshal hasn't seen it yet ... She saw a portion of it, but when she returns — that's when she's going to take a look at it and decide whether it is completed to her satisfaction."

A copy of the CFNIS press release dated October 26, 1998 is reprinted in Appendix V.

Assessment

As previously noted, the CFNIS investigative file, including its report of the investigation into the allegations brought forward by Captain Poulin against Colonel Labbé, has been carefully reviewed in the preparation of this report. The CFNIS press release cited by Captain Poulin has also been carefully reviewed in its entirety.

The media coverage of the allegations contained in Captain Poulin's July 9, 1996 memorandum, which became public at the press conference of June 17, 1998, and the ongoing CFNIS investigation, clearly focused on the allegations brought forward by Captain Poulin as a witness. It is reasonable to conclude that the general public was aware of the allegations and Captain Poulin's version of events as set forth in his July 9, 1996 memorandum, which has almost invariably been referred to in all media coverage of the case.

I am satisfied that the spirit and intent of the CFNIS press release, and the perception which would be left with a reasonable person given the language used, was that the CFNIS, an agency mandated to conduct investigations into potential criminal and service-related offences, did not substantiate the allegations that Colonel Labbé behaved inappropriately toward a member of the mess dining room staff. In light of the totality of the evidence uncovered by the CFNIS investigators and their conclusions, I am satisfied that the perception the CFNIS press release would create in the minds of reasonable and objective members of the public is not misleading or inaccurate.

Allegation 3

Misleading press release regarding the results of CFNIS investigation into allegations against Lieutenant-General Leach

The CFNIS report dated October 6, 1998 notes that two CFNIS investigators:

> … interviewed MAJ LAVOIE who stated that when CAPT POULIN returned from his course at (CLFCSC) he related his concerns about the course and COL LABBÉ to him. (Major Lavoie) advised CAPT POULIN to report these concerns in a memo to LGEN LEACH. (Major Lavoie) verbally briefed LGEN LEACH about the concern in the memo including the incident with COL LABBÉ and the waitress and told him that these concerns would be addressed to him in a memo. When (Major Lavoie) received the 9 Jul 96 memo from CAPT POULIN he put it on top of the "ACTION" pile and gave it to LGEN LEACH saying that the memo on top is extremely sensitive and involves allegations about COL LABBÉ and women. After CAPT POULIN asked him 2-3 times about the memo (Major Lavoie) told LGEN LEACH that CAPT POULIN was wondering about his memo. LGEN LEACH responded that he didn't have to

> report to a CAPTAIN. MAJ LAVOIE asked him if he was handling it and (LGEN LEACH) said yes.

This report of the investigation concludes that:

> Although CAPT POULIN and MAJ LAVOIE stated that they recalled discussing the 9 Jul 96 memo with LGEN LEACH he is adamant that he never saw the memo and he stated that if he had seen it, he would have taken immediate action ... There is no evidence to support criminal or service offence charges against LGEN LEACH; however, this issue should be reviewed from an administrative perspective by the chain of command.

The report was released to the public on October 26, 1998 under the heading, "CFNIS finds no evidence to support allegations against Colonel Labbé and Lieutenant-General Leach."

The release then stated:

> In addition to finding insufficient evidence against Lieutenant-General Leach, the CFNIS investigating team found no evidence to support the idea that any other individual within the chain of command had been made aware of the memorandum, or the information contained in it.

Captain Poulin's complaint relating to the press release's treatment of the allegation involving Lieutenant-General Leach pertains specifically to the passage quoted above that reports "the investigating team found no evidence to support the idea that any other individual within the chain of command had been made aware of the information, or the information contained in it." From a comparison of the contents of the press release with the information in the file, it is readily seen that the press release is misleading in at least three material respects as follows:

1. The headline, presented in bold at the top of the release, asserts that "Canadian Forces National Investigation Service finds no evidence to support allegations against .... Lieutenant-General Leach."

Captain Poulin's complaint concerned Lieutenant-General Leach's alleged inaction in response to the memorandum of July 9, 1996. Contrary to the headline, the investigation did uncover evidence of inaction by Lieutenant-General Leach. Major Michel Lavoie gave the memorandum to Lieutenant-General Leach, describing it as extremely sensitive and advising him that it was about allegations involving Colonel Labbé and women. Major Lavoie also said he asked Lieutenant-General Leach about the memorandum on two or three occasions, and was told by Lieutenant-General Leach that he did not have to report to a captain. Although Major Lavoie recalled that Lieutenant-General Leach responded positively when asked if he was handling it, the investigation revealed that Lieutenant-General Leach had taken no such action about the allegations in the memorandum.

The misleading headline is ameliorated to some degree by the passage in the body of the press release which states:

> The Canadian Forces National Investigation Service (CFNIS) has determined that there is no evidence to support the allegations of sexual misconduct made against Colonel Serge Labbé, and that *there is insufficient evidence* to support allegations of inaction against Lt.-Gen. Bill Leach (emphasis added).

The contradistinction between no evidence with respect to Colonel Labbé and insufficient evidence with respect to Lieutenant-General Leach does communicate, contrary to the headline, that there must have been some evidence relating to the allegation against Lieutenant-General Leach.

2. The press release fails to disclose that the report of the investigation recommended that, given the recollections of Captain Poulin and Major Lavoie, the issue of Lieutenant-General Leach's denial that he ever saw the memorandum should be "reviewed from an administrative perspective by the chain of command."

Although it is often a matter of controversy whether a particular non-disclosure is misleading, in this case it clearly was. The press release stated that there was "insufficient evidence to support allegations of inaction against Lt.-Gen. Bill Leach." This statement was obviously intended to refer to evidence of criminal or service-related offences, but the lack of any reference to the recommendation for an administrative review leaves the impression that there was "insufficient evidence" to find any merit in Captain Poulin's complaint regarding Lieutenant-General Leach's inaction. It is clear from the recommendation to review the matter from an administrative perspective in the report of the investigation, however, that there was lingering concern that Captain Poulin's complaint was not dealt with properly, even if there was an inadequate basis for a criminal or service-related offence charge. The omission of any mention of the recommendation for administrative review contributed to the mistaken impression that there was “insufficient evidence” to find merit in the complaint, when in fact there remained lingering concern about Lieutenant-General Leach’s inaction.

That this impression was created is demonstrated beyond any doubt by observing comments made by the Minister of National Defence during a media scrum on October 26, 1998. During that scrum, the following exchange took place:

> Q: The NIS also said that there was no indication that others in the chain of command had knowledge of the allegations in this controversy. Does this in fact then lift an impediment that might have been hanging over the head of General Baril?
>
> Hon. Art Eggleton: Well I think the decision speaks for itself. The National Investigation Service did a thorough investigation, in fact it was done under the aegis of an inspector of the RCMP, and I’m satisfied with the findings and the report. And I think that’s the end of the matter.

Clearly, for the Minister to express publicly that the report was the end of the matter, when in fact the report had itself recommended an administrative review, shows beyond all doubt that the press release was misleading.

3. As Captain Poulin complained, the press release asserts that “the investigating team found no evidence to support the idea that any other individual within the chain of command had been made aware of the memorandum.”

This passage created the definite impression than no-one other than then Major-General Leach had seen or been made aware of the memorandum or the allegation. As indicated above, Major Lavoie knew of the allegation and had seen the memorandum.

Captain Alain Bissonnette was the media relations officer for the CFNIS in October 1998, and acknowledges that he prepared the media release for the CFNIS. Ombudsman’s investigators interviewed Captain Bissonnette at the Bulford Camp Military Police Complex in England on September 13, 2000. A copy of Captain Poulin’s allegation against him was provided to him prior to the interview. Captain Bissonnette stated that he prepared media releases from information supplied to him by investigators or from reports of investigations once completed. Captain Bissonnette related that all news releases he prepared were submitted to Brigadier-General Patricia Samson for review and that Brigadier-General Samson's approval was necessary before any news release would be sent out for publication.

During her interview with Ombudsman's investigators, Brigadier-General Samson acknowledged she read and approved all news releases, including this release.

Assessment

As indicated above, the press release was misleading in three respects.

The first way in which the press release was misleading, the headline's announcement that no evidence was found against Lieutenant-General Leach, receives some clarification through a careful reading of the body of the release. It is obvious that the headline was not intended to mislead but rather represented a clipped "sound bite" that, unfortunately, did not succeed in capturing the essence of the release.

With respect to the second misleading characteristic, the omission of any mention of the recommendation for administrative review, I do not find that a decision was made to omit this in order to sanitize the report. It is evident that those who prepared the press release focused on the jurisdiction of the CFNIS as it relates to criminal and service-related offences, and were content to report that no charges would be laid. It is apparent that they did not appreciate the relevance of the recommendation for an administrative review or the contribution its inclusion would have made to improving the overall accuracy of the public impression created by the press release.

The third misleading characteristic, the representation that "the CFNIS investigating team found no evidence to support the idea that any other individual within the chain of command had been made aware of the memorandum, or the information contained in it," was the subject of Captain Poulin's complaint. My investigators therefore presented it as the essence of the misleading nature of the release when they met with Brigadier-General Samson. She did not see this passage as misleading. She explained that the reference to "chain of command" in the press release meant Lieutenant-General Leach's chain of command, not Captain Poulin's chain of command. She elaborated on this explanation in her response to the interim report. According to Brigadier-General Samson, that term described everyone above the rank of then

Major-General Leach. At the time, Major-General Leach's chain of command consisted of the Commander of Land Forces and ultimately the Chief of the Defence Staff, neither of whom had seen or been made aware of the memorandum or its contents.

I, of course, accept Brigadier-General Samson's explanation. There was no intent on her part to mislead as to whom had or had not seen the memorandum. That said, it is clear that the drafting of the passage does not make it at all clear that the press release was talking about Lieutenant-General Leach's chain of command. It refers to any other individual within *the* chain of command, without specifying whose chain of command.

Two things make the reader naturally assume that the reference was to Captain Poulin's chain of command. First, complaints by a member normally would work their way up his or her chain of command; moreover, the complaint was about inactivity related to Captain Poulin's complaint. Context alone would cause the reader to assume that the reference was to Captain Poulin's chain of command as those to whom he would complain and whether they had undertaken any activity with respect to his complaint.

Second, there had never been any suggestion that those above Lieutenant-General Leach had learned of the memorandum. Their vindication in the press release would therefore appear to be gratuitous. It is not surprising, then, that the release was misunderstood. It was misunderstood by Captain Poulin, who saw this passage as misleading, and it was misunderstood by everyone in my Office who read it. More to the point, it was misleading in a way that caused significant embarrassment to Captain Poulin. In its totality, the release leaves the unquestionable message that the complaint that Captain Poulin had made against Lieutenant-General Leach was determined to have been without merit, when it is clear that his complaint was not dealt with as it should have been. As our investigation has revealed, there was inaction. Yet the press release made it appear as though Captain Poulin had brought a largely groundless complaint against a superior officer, when such a conclusion was not the finding of the investigation.

The importance of public releases of the results of CFNIS investigations should be evident from this experience. The CF has embarked on a commitment to openness and transparency so that any problems or unfairness that exist can see the light of day and be fixed. There has been a keen public interest in the state of the CF, and the public depends on accurate information to form accurate impressions. Accordingly, tremendous care must be employed not to release public statements that can be misinterpreted as spin-doctoring, whether due to inexactitude, over-simplistic headlines, the ambiguous employment of technical concepts such as "chain of command" or failure to include all information needed to form an accurate impression.

The release of public statements open to misinterpretation, for whatever reasons, creates two casualties. The first casualty is the reputation of the CF for openness and transparency; furthermore, the real credit for a job well done is not received. In this case, for example, the investigation was conducted with impartiality and fairness by the CFNIS, and its recommendation for further administrative review was commendable. The plaudits that should have been given to the CFNIS have been lost, despite my findings, amid concerns about whether the release was an attempt to gloss over problems in the way the Poulin complaint was handled.

The second casualty of inadequately worded public releases is the "little" person. As previously indicated, even though I am satisfied that it was not meant to do so, this press release left the impression that Captain Poulin's complaint had been found to be groundless, when it had not been so determined. This is an injustice that must be corrected.

Ombudsman's recommendation

I therefore recommend that:

9. **The Canadian Forces National Investigation Service issue a further press release to inform the public of the complete results of its investigation into the allegations against Lieutenant-General Leach, including the fact that evidence was uncovered that other individuals within Lieutenant-General Leach's office had seen the memorandum submitted by Captain Poulin in July 1996 and were aware of its contents. The press release should also include the Canadian Forces National Investigation Service recommendation that the matter be reviewed from an administrative perspective by the chain of command.**

I. Allegation against Captain Alain Bissonnette

Captain Bissonnette is a military police officer who served as the Media Relations Officer for the CFPM at the time of the CFNIS investigations into the allegations in Captain Poulin's July 9, 1996 memorandum. As previously noted, Captain Bissonnette was responsible for authoring a media release dated October 26, 1998 that informed the public of the results of the CFNIS investigations into the allegations against Colonel Labbé contained in the July 9, 1996 memorandum and of the allegations of inaction on the part of Lieutenant-General Leach.

The allegation against Captain Bissonnette, contained in the written complaint Captain Poulin submitted to the Ombudsman's Office, indicates that the October 26, 1998 media release was inaccurate in its communication of the conclusions of the investigations into the allegations against both Colonel Labbé and Lieutenant-General Leach. The substance of this portion of the complaint is dealt with under the second and third allegations relating to Brigadier-General Samson who, as the CFPM at the relevant time, was the person responsible for reviewing and approving all CFNIS press releases.

J. Allegation against Brigadier-General Charles Lemieux

Brigadier-General Charles Lemieux is currently a Special Advisor to the Chief of the Defence Staff on Professional Development. Formerly, Brigadier-General Lemieux was the G5 (Director of Communications) for the Land Forces, and held the rank of Colonel. Captain Poulin alleges that then Colonel Lemieux made false statements to the media regarding the initiation of the investigations related to the allegations contained in Captain Poulin's July 9, 1996 memorandum and subsequent alleged inaction.

Brigadier-General Lemieux advised Ombudsman's investigators that he was satisfied with the relevant portion of the interim report and that he did not have any comments to offer.

The written complaint Captain Poulin submitted to this Office states:

> On or around July 20, 1998 on "J.E. EN DIRECT" between approximately 12:30 hrs and 13:30 hrs. Col. Lemieux knowingly misinformed the media regarding the initiation of the NIS investigation regarding my memo dated 9 July 1996 and made public on or around 17 June 1998.
>
> The misinformation Col. Lemieux gave the media on or around July 20, 1998 should have been corrected in accordance with Public Affairs Defence Administrative Orders and Directives dated March 1, 1998. It states: "In consultation with DGPA or Command Public Affairs, COs and DND managers shall promptly undertake appropriate PA activities to correct factual errors, misquotes and misleading information attributed to the DND or the CF."

Brigadier-General Lemieux was interviewed on audiotape by Ombudsman's investigators in his office at 222 Nepean Street on November 15, 2000. A copy of Captain Poulin's allegation against him was provided to Brigadier-General Lemieux prior to the interview.

Brigadier-General Lemieux was part of a panel on a televised interview on *J.E. En Direct*, entitled "Women in the Armed Forces," on July 20, 1998. At the time, then Colonel Lemieux was the Director of Communications for the Land Forces. Ombudsman's investigators reviewed a copy of the program transcript. The show was hosted by Jocelyn Cazin and included a number of panellists including Brigadier-General Lemieux.

During the broadcast, Brigadier-General Lemieux commented on Lieutenant-General Leach having immediately requested an investigation into the allegations contained in Captain Poulin's July 9, 1996 memorandum. Brigadier-General Lemieux stated he was present when Lieutenant-General Leach prepared his hand-written statement to the CFPM and was aware of Lieutenant-General Leach's request for an investigation. Brigadier-General Lemieux related that he used no other sources of information during his participation at the July 20, 1998 panel discussion. Lieutenant-General Leach's hand-written statement requesting follow-up by the CFPM is attached as Appendix IV to this report. Observations on the need for procedures to ensure that subjects of allegations are not responsible for referring the same matters to the Military Police for investigation are dealt with elsewhere in this report.

Assessment

As I have previously indicated, it appears from a review of the CFNIS investigative file and Lieutenant-General Leach's memorandum that the CFNIS had already been tasked to investigate the allegations against Lieutenant-General Leach before his memorandum was completed and submitted to the CFPM. In his memorandum prepared and submitted on June 17, 1998, Lieutenant-General Leach does, however, request that the CFPM "take whatever follow-up action is necessary, as soon as you can."

Brigadier-General Lemieux's public comments were clearly intended to convey that Lieutenant-General Leach responded to the matter in a timely fashion by requesting an investigation and that Lieutenant-General Leach was supportive of the CFNIS in its role as investigator of the allegations against Colonel Labbé and the allegations involving him. This support is in fact reflected in Lieutenant-General Leach's request in his June 17 memorandum to the CFPM that she take any necessary follow-up action. (My comments and concerns in relation to the nature of Lieutenant-General Leach's memorandum and the perception it raises are detailed elsewhere in this report.)

I am not satisfied that Brigadier-General Lemieux's comments were inaccurate or that they created a misleading perception.

K. Allegation against Lieutenant-Colonel Pierre Pellicano

Allegation

Improper consideration of redress of grievance regarding decision to dismiss military police complaints

Lieutenant-Colonel (Retired) Pellicano is the former Director of CF Grievance Administration. He responded to the relevant portion of the interim report in writing, on March 7, 2001. In his written response, he indicates: "In conclusion I fully agree with your investigators' balanced assessment of Captain Poulin's submission to your office." All of the written responses to the interim report can be found in Appendix VI.

Captain Poulin filed a redress of grievance on January 26, 1999 pursuant to CF Administrative Order 19-32 in response to the decision by the Deputy Provost Marshal Professional Standards to dismiss his military police complaints as vexatious.

In his written complaint submitted to this Office, Captain Poulin alleges that, as head of the CF Grievance Administration, Lieutenant-Colonel Pellicano should not have been involved in the handling of his grievance due to conflict of interest and further that Lieutenant-Colonel Pellicano was unable to properly deal with Captain Poulin's redress of grievance because he was lower in rank than persons who were named in the redress including Brigadier-General Samson, the CFPM. Captain Poulin also argues that his application for redress ought to have been granted and the decision by Lieutenant-Colonel Cloutier to dismiss Captain Poulin's complaints ought to have been rescinded.

Captain Poulin states in the written complaint submitted to this Office:

> Lt.-Col. P. Pellicano, the DCFGA, should not have investigated and rendered a decision in my harassment complaint against Lt.-Col. Cloutier and the then Col. Samson. Given his rank and marital status, there is, at the very least, a perception of bias because he violated CFAO 19.39.
>
> An investigator must be chosen who neither has any interest in the outcome of the investigation, nor is perceived to have any personal link to anyone with an interest in the outcome (CFAO 19.39 par. 46(b). In this case, DGPA had a clear interest in the outcome given that this option (i.e. grievance) was also being touted as an alternative dispute resolution mechanism for my allegations against many serving staff members at DGPA.
>
> The investigator ... should be equal or superior in rank to both the complainant and the alleged harasser (CFAO 1939, para. 46 (c)). The then Col. Samson's letter 2120-20-2 (CFPM) dated March 11, 1999 addressed to Comdt CFSU(O) clearly established her involvement in my grievance of harassment.
>
> Lt.-Col. Pellicano should have rescinded Lt.-Col. Cloutier decision because it also violated VCDS 083 / CANFORGEN 100/97 dated October 16, 1997. It states: " For this interim process (MP complaint review and investigative process) to be fair and successful, it

> is essential that all commanders and leaders remain neutral and impartial towards all parties throughout the complaint process."

The issue related to the process followed and the decision by Lieutenant-Colonel Cloutier to dismiss Captain Poulin's military police complaints is dealt with elsewhere in this report.

Ombudsman's investigators interviewed Lieutenant-Colonel (Retired) Pellicano as a witness and subject of this complaint on October 12, 2000. They also obtained a copy of the relevant grievance file and reviewed it. The file contains Captain Poulin's grievance submission and subsequent correspondence from the CF Support Unit (Ottawa) and the CF Grievance Administration at NDHQ. It should be noted that the CF Administrative Orders cited in the written complaint submitted to this Office in fact apply to complaints of harassment and thus are not applicable to the redress of grievance filed by Captain Poulin, which complained about the administrative decision taken by Lieutenant-Colonel Cloutier in dismissing his complaints and the process that was followed in arriving at that decision.

Mr. Pellicano explained that the process followed within the CF Grievance Administration involved collecting opinions relevant to the grievance submission from experts and developing a summary of their comments to go before the Chief of the Defence Staff for a decision. Mr. Pellicano related that the role of his office was administrative in nature and, beyond distributing the grievance submission to the appropriate experts and ensuring the completeness of the grievance file, his office was not involved in any investigative process nor did it adjudicate the grievance submissions.

Captain Poulin's submission for redress of grievance was handled by Major Simone Morrissey, Mr. Pellicano's Senior Analyst. On May 4, 1999, a memorandum was issued from Major Morrissey on behalf of Lieutenant-Colonel Pellicano to Captain Poulin via his Commanding Officer, the Commandant of CF Support Unit (Ottawa). Major Morrissey advised Captain Poulin that his grievance could not be considered for adjudication as it did not articulate the redress which was sought as required by CF grievance procedures. In the memorandum, Captain Poulin was informed that no action would be taken on his application for redress until he specified the actual redress he was seeking.

The memorandum dated May 4, 1999 states:

> Capt. Poulin is to be advised that the role of this Directorate is to review, administratively investigate and co-ordinate grievance files on behalf of the Chief of the Defence Staff and the Minister of National Defence. An initial review of this file has determined that [Captain Poulin] has not clearly articulated the redress that he is seeking …
>
> … Capt. Poulin is to be advised that no administrative action will be taken on his application for redress of grievance until such time as the actual redress sought is defined IAW QR&O 19.27.

Captain Poulin did not make any attempt to resubmit his application for redress of grievance specifying the actual redress he was seeking.

The allegation that Mr. Pellicano should not have been involved in the handling of Captain Poulin's application for redress of grievance is based, in part, upon the fact that Mr. Pellicano's spouse was at that time the secretary to Mr. Georges Rioux, Director General Public Affairs at DND. Captain Poulin was at that time and remains a member of the CF who is posted to a division within DGPA. Mr. Pellicano stated to Ombudsman's investigators that he never discussed the content of any grievance, including Captain Poulin's, with his wife. He acknowledged, however, that there is the potential for a perception of bias in some cases.

Assessment

In this case, the redress of grievance filed by Captain Poulin does not appear to list Mr. Rioux, Director General Public Affairs, as either a subject or witness, and the issues complained about and source of the potential for a conflict of interest is not clear. The grievance submitted by Captain Poulin was against the Deputy Provost Marshal Professional Standards, Lieutenant-Colonel Cloutier and then CFPM Brigadier-General Patricia Samson in relation to the administrative decision of Lieutenant-Colonel Cloutier to dismiss Captain Poulin's military police complaints.

Captain Poulin's suggestion that, because the grievance process might be used to consider his complaints of harassment and retaliation against members of Public Affairs, DGPA had an interest in the outcome of his redress of grievance against the CFPM and the Deputy Provost Marshal Professional Standards is speculative at best. It must also be considered that it is the Chief of the Defence Staff who has the ultimate authority to adjudicate a grievance, including any grievance that Captain Poulin might have elected to submit to address his allegations of harassment by members of Public Affairs. In light of all of these factors, I am not satisfied that a reasonable perception of conflict of interest existed in this instance.

I am also not satisfied, based on the evidence collected by my investigators, including the information contained in the grievance file, that the issue of rank influenced the handling of Captain Poulin's grievance. Captain Poulin's grievance was not in fact investigated and was not submitted to the Chief of the Defence Staff for adjudication because it failed to specify the specific redress which was sought, and meet a technical requirement set out in the CF grievance procedures. The memorandum authored by Major Morrissey on behalf of the Director CF Grievance Administration clearly left the door open for Captain Poulin to resubmit his application for redress of grievance, specifying the redress sought as required by the procedures.

PART THREE:

Harassment, retaliation and reprisal within Public Affairs at National Defence Headquarters

Summary of assessment of findings to allegations of harassment, retaliation and reprisal against members of Media Liaison Office within National Defence Headquarters

At the time that his July 9, 1996 memorandum became public, Captain Poulin worked as a public affairs officer within the Media Liaison Office at National Defence Headquarters (NDHQ). His immediate supervisor was Lieutenant-Commander Denise LaViolette. The written complaint Captain Poulin submitted to this Office states he was subjected to numerous instances of harassment by his immediate chain of command and other staff within Director General Public Affairs (DGPA) as retaliation and reprisal for making the allegations contained in the July 9, 1996 memorandum. Captain Poulin also indicates that the members of his chain of command failed to adequately respond to his complaints of retaliation and that ultimately the resulting stress and tension led him to request a transfer out of the Media Liaison Office and into another section within Public Affairs at NDHQ.

It should be noted that this Office does not normally investigate complaints of harassment. The Ombudsman's Office agreed to investigate Captain Poulin's complaints at the request of the Chief of Review Services, pursuant to paragraph 7 of this Office's mandate, based on the fact that the specific complaints constituted allegations of retaliation and reprisal stemming from Captain Poulin's identification as the author of the July 9, 1996 memorandum, which was not addressed or acknowledged when he submitted it to Lieutenant-General Leach, at that time Deputy Commander of Land Forces.

It is evident that the relationship between Lieutenant-Commander LaViolette and Captain Poulin was not always characterized by mutual professional respect. While Captain Poulin's attitude toward Lieutenant-Commander LaViolette appeared civil, there is evidence to indicate that Captain Poulin harboured a negative impression of her from very early on in their working relationship. Captain Poulin's diary entries capture his thoughts of not wanting to continue working in the Media Liaison Office, and for

Lieutenant-Commander LaViolette in particular, months before the events of June 1998.

The beginning of the conflict between Lieutenant-Commander LaViolette and Captain Poulin can be traced to the beginning of their working relationship in March 1998, three months prior to the public release of Captain Poulin's memorandum alleging inappropriate behaviour on the part of Colonel Labbé. Captain Poulin's hand-written diary contains many entries that are critical of Lieutenant-Commander LaViolette. These entries occur both before and after June 17, 1998. I do not consider it necessary to relate the specifics of the diary entries recorded by Captain Poulin. They are remarkable only in conveying the degree to which Captain Poulin seemed to monitor and record the details of Lieutenant-Commander LaViolette's daily activities. The number of entries critical of her suggests that Captain Poulin did not respect Lieutenant-Commander LaViolette's leadership and management style and that he was privately contemptuous toward her.

The nature of Captain Poulin's employment also contributed to the lack of trust that became apparent between Captain Poulin and Lieutenant-Commander LaViolette. Captain Poulin's job while a member of the Media Liaison Office required him to have routine daily contact with members of the media. After his memorandum of July 9, 1996 became public on June 17, 1998, Captain Poulin personally became the subject of considerable media interest. This caused Captain Poulin's superiors to immediately consider moving him out of the Media Liaison Office. The consideration was that his position as a public affairs officer might conflict with his right to converse with members of the media and to express his personal views about his experiences. This option was rejected however, because it was feared moving Captain Poulin might outwardly be perceived as punishing him.

The decision to retain Captain Poulin in the Media Liaison Office appears to have been motivated more by external concerns than by sensitivity to the individuals involved and the unique circumstances. Consequently, Captain Poulin was held in a position where his professional responsibilities as a public affairs officer were in conflict with his personal involvement as a subject of considerable media interest. Retained in the Media Liaison Office, Captain Poulin and his activities fell under heightened scrutiny by his superior, Lieutenant-Commander LaViolette, and to a lesser extent by the senior captain in the office, Captain Jean Morissette, out of a desire to ensure that Captain Poulin's professional obligations were not compromised.

Ombudsman's investigators interviewed several current and former staff members of the Media Liaison Office and it became apparent that Lieutenant-Commander LaViolette favoured a rather close style of managing subordinates. While Lieutenant-Commander LaViolette's supervision was characterized as sometimes excessive, she was also described as a caring supervisor who tended to make administrative problems and the general welfare of her subordinates her personal concern. Captain Poulin's reaction to Lieutenant-Commander LaViolette's style of management contributed to the problems that developed between her and Captain Poulin and were in fact documented by Captain Poulin prior to the July 9, 1996 memorandum having been made public. Specifically, Lieutenant-Commander LaViolette's tendency to attempt to "look out for the welfare of one of her subordinates" served as a source of hostility for Captain Poulin, who clearly did not welcome Lieutenant-Commander LaViolette's involvement in this matter.

It is clear that the relationship between Lieutenant-Commander LaViolette and Captain Poulin was not a perfect one and that there were tensions on both sides. It is also clear that during the period immediately following the release of the July 9, 1996 memorandum, Captain Poulin was the subject of much media attention. This obviously caused additional stress and tension to be placed upon him, particularly in his workplace and I am certain that, at times, he found his position very frustrating.

I am satisfied, however, that neither Lieutenant-Commander LaViolette nor other members of the Media Liaison Office within NDHQ abused their authority or engaged in a course of harassing behaviour designed to retaliate against Captain Poulin for his role in bringing the allegations contained in the July 9, 1996 memorandum forward.

I view the ongoing stress and tension Captain Poulin suffered during this time and his feelings that he was being targeted and subjected to retaliation as directly related to the fact that serious allegations he had brought forward to the chain of command in 1996 had not been acknowledged or responded to. As I have previously indicated, when members present serious problems and issues of concern to their chain of command, they deserve a response. When this does not happen, it is reasonable that such individuals will suffer a loss of confidence in the intentions of the organization and its leadership to treat them fairly.

A. Allegations against Lieutenant-Commander Denise LaViolette

Captain Poulin indicates in his written complaint that Lieutenant-Commander LaViolette, his former immediate supervisor, harassed and retaliated against him and abused her authority over him after his memorandum dated July 9, 1996 became public.

Lieutenant-Commander LaViolette responded to the relevant sections of the interim report in writing on March 12, 2000. Her response has been carefully reviewed and clarifications added to this final report where appropriate. At the conclusion of her response, Lieutenant-Commander LaViolette thanked my staff "for their sensitivity and thoroughness in dealing with this issue."

Allegation 1

Use of intimidation and request that Captain Poulin reveal information that was the subject of an ongoing CFNIS investigation

In the written complaint submitted to this Office, Captain Poulin states:

> On or around June 17, 1998, beginning at approximately 15:00 hrs, Lieutenant-Commander Laviolette tried to intimidate me using "emotional blackmail" to reveal information when I had been specifically told not to discuss this matter as it was all being investigated by the NIS. Specifically, on the evening of June 17, 1999, she stated: "I'm not convinced by your (meaning me) answers and that I'm going to lose a lot of sleep over our whole conversation tonight ..."

Further, Captain Poulin alleges that:

> On or around June 18, 1998, Lieutenant-Commander Laviolette, who was my immediate supervisor, used her rank and "emotional blackmail" against me so that I would reveal more information relating to the case being investigated by the NIS. Specifically, she said that she could no longer "trust me."

Ombudsman's investigators interviewed Lieutenant-Commander LaViolette on audiotape on February 17, 2000.

Lieutenant-Commander LaViolette acknowledged calling Captain Poulin twice at his residence during the early evening of June 17, 1998. Lieutenant-Commander LaViolette stated her purpose for calling Captain Poulin at home was two-fold. First, she stated she called Captain Poulin after a question was raised by her superior, Colonel Ralph Coleman, about whether Captain Poulin had responded to media queries about having hand-delivered his memorandum of July 9, 1996 to Lieutenant-General Leach. Secondly, Lieutenant-Commander LaViolette stated she needed to clarify her own understanding of the situation so she would be in a position to "represent [her] subordinate's case to superiors."

Ombudsman's investigators questioned Lieutenant-Commander LaViolette about her meeting with Captain Poulin that took place in her office on June 18, 1998. Lieutenant-Commander LaViolette stated her questions pertained to Captain Poulin's comments to members of the media on June 17, 1998 and how his July 9, 1996 memorandum made its way to Scott Taylor of *Esprit de Corps* magazine. Lieutenant-Commander LaViolette offered that she believed neither question was the subject of the ensuing investigations by the Canadian Forces National Investigation Service (CFNIS).

On February 8, 2000, Ombudsman's investigators also interviewed retired Colonel Ralph Coleman as a witness and subject of Captain Poulin's complaint. Mr. Coleman was the Acting Director General Public Affairs when Captain Poulin worked in the Media Liaison Office. As the Acting Director General, Mr. Coleman was in a position to take steps to deal with workplace issues referred to him. Both Lieutenant-Commander LaViolette and Captain Poulin were his subordinates.

Mr. Coleman stated he recalled directing Lieutenant-Commander LaViolette to phone Captain Poulin at home to ascertain when Captain Poulin had provided interviews to the media. Mr. Coleman recalled that Lieutenant-Commander LaViolette reported that Captain Poulin was offended his integrity was being questioned and that Lieutenant-Commander LaViolette seemed to doubt whether Captain Poulin was being honest with her.

On December 14, 1999, Ombudsman's investigators interviewed Captain Jean Morissette on audiotape as a witness and subject of Captain Poulin's allegations. Captain Morissette was Lieutenant-Commander LaViolette's second-in-command and served in the Media Liaison Office from January 1997 until March 1999.

Captain Morissette related that prior to June 17, 1998, the atmosphere in the workplace at the Media Liaison Office was very good but that, after Captain Poulin's memorandum became public, the tension between Lieutenant-Commander LaViolette and Captain Poulin caused the atmosphere to deteriorate. Captain Morissette further offered that he did not perceive Lieutenant-Commander LaViolette as treating Captain Poulin unfairly. Rather, Captain Morissette stated he felt Lieutenant-Commander LaViolette tried to avoid confrontation with Captain Poulin and avoided assigning him extra tasks.

Captain Morissette described Captain Poulin as a very intelligent and professional officer. Captain Morissette related, however, that he believed Captain Poulin to be very absorbed by the situation that pertained to his memorandum and Lieutenant-General Leach's press conference of June 17, 1998. Captain Morissette stated that he believed Captain Poulin enjoyed being the subject of media attention and that he recalled Captain Poulin trying to illicit interest in his case on at least one occasion when speaking with a member of the media.

Captain Morissette described Lieutenant-Commander LaViolette as a very professional and dedicated officer who, while very demanding, was also sincerely interested in the welfare of her subordinates. Captain Morissette believed that Lieutenant-Commander LaViolette sought to help Captain Poulin but felt Captain Poulin did not welcome her help and that as a result a rift developed.

Ombudsman's investigators asked Lieutenant-Commander LaViolette about the meeting she held with Captain Poulin in her office on June 18, 1998. Captain Poulin alleges that, during this meeting, Lieutenant-Commander LaViolette "used her rank and 'emotional blackmail' against [him] so that [he] would reveal more information relating to the case being investigated by the NIS" and stated that she could no longer trust him.

Lieutenant-Commander LaViolette stated to the Ombudsman's investigators that she did recall having a discussion with Captain Poulin on June 18, 1998. She also documented her version of this event in a memorandum dated June 26, 1998. Her memorandum was drafted in response to allegations raised about this incident by Captain Poulin in his memorandum to Mr. Coleman of June 25, 1998.

As documented in her memorandum of June 26, 1998, Lieutenant-Commander LaViolette was adamant her discussion with Captain

Poulin was not an attempt to have Captain Poulin reveal information under investigation by the CFNIS. Lieutenant-Commander LaViolette related that her discussion with Captain Poulin sought to address contradictions between media reports and what Captain Poulin had reported to his supervisor about his comments to the media.

Assessment

Lieutenant-Commander LaViolette acknowledged that she did question Captain Poulin about statements he had made to members of the media and whether he had provided a copy of his July 9, 1996 memorandum to Scott Taylor of *Esprit de Corps* magazine. Lieutenant-Commander LaViolette's questioning of Captain Poulin was done in her capacity as Captain Poulin's immediate supervisor.

Pursuant to Defence Administrative Order and Directive 2008-2, Canadian Forces (CF) members and employees of the Department of National Defence (DND) are authorized to speak publicly about their own jobs provided certain parameters are respected and supervisors are informed of such activities. However, Captain Poulin's status as a public affairs officer in the Media Liaison Office also entrusted him with responsibilities as a CF spokesperson. In this capacity, Captain Poulin was required to register media queries handled by him in the computer log maintained by the Media Liaison Office. Lieutenant-Commander LaViolette's questioning of Captain Poulin was in response to a query by Colonel Coleman because, in their view, it appeared that Captain Poulin might have spoken to the media without informing his superiors. I am satisfied that it was not an abuse of authority for Lieutenant-Commander LaViolette or Colonel Coleman as Captain Poulin's supervisors to question him with a view to determining whether he had spoken to a member of the media and not informed his superiors as required by the policy.

I am also satisfied that the questions Lieutenant-Commander LaViolette asked Captain Poulin about whether he had spoken to members of the media in relation to the July 9, 1996 memorandum did not constitute intimidation or an attempt to interfere with the ongoing CFNIS investigations. As noted elsewhere in this report, the CFNIS was in fact investigating the allegations of misconduct against Colonel Labbé contained in the July 9, 1996 memorandum and the alleged failure of Lieutenant-General Leach to take appropriate action.

Allegation 2

Interference with Captain Poulin's right as a CF member to speak to the media about what he does in his official capacity

Captain Poulin alleges that:

> On or around June 22, 1998, between approximately 08:00 hrs and 08:15 hrs, Lieutenant-Commander Laviolette held a meeting in her office. During that meeting she said that, henceforth, (1) there were to be no longer any "sidebar" conversations with the media, we were to be courteous but prompt and to the point, (2) every media request, no matter how silly, was to be registered in the MLO Daily Log, (3) we must never entertain any calls from people working in the media at home (friends who may work for the media included), and (4) we were to follow the rules of the little Public Affairs aide-memoir hand-out to the letter.
>
> The directions given to me by Lieutenant-Commander Laviolette stands in stark contrast to the Public Affairs Defence Administrative Orders and Directives dated March 1, 1998. It states: "This DAOD empowers and encourages DND employees and CF members to speak to the media about what they do in their official capacity as a valuable and important way to provide Canadians with a richer understanding of the day-to-day operations and contributions of the CF and DND." It also states: "It is important to nurture and maintain open and positive relations with the media as a way of reaching out to Canadians and providing them with information about how the CF and DND make a difference."

Lieutenant-Commander LaViolette recalled the meeting and confirmed that she had called her subordinates, Captain Lynne Chaloux, Captain Morissette and Captain Poulin, into her office to address what she described as her staff "becoming too casual with members of the media." Lieutenant-Commander LaViolette stated that both Captain Chaloux and Captain Poulin were overly familiar with the media whereas she did not feel this was a concern for Captain Morissette. Nonetheless, Lieutenant-Commander LaViolette indicated she had issued instructions to all three subordinates rather than single out any individual.

Lieutenant-Commander LaViolette commented further that she found it interesting that Captain Poulin felt this action was directed at him when she had addressed her instructions to all three captains. Furthermore, she recalled Captain Chaloux coming to see her minutes after the meeting to object because she believed Lieutenant-Commander LaViolette's instructions were directed primarily at her.

When interviewed by Ombudsman's investigators, Captain Chaloux provided additional comments about this event. Most noteworthy was the fact that, immediately following the general meeting, Captain Chaloux went to see Lieutenant-Commander LaViolette alone in her office to object to her instructions. Captain Chaloux related that she told Lieutenant-Commander LaViolette that she very strongly disagreed with the direction to adopt a "less friendly" and "strictly business" tone. Captain Chaloux argued that her "casual style" worked for her and that she had no intention of changing it. Later that same day, Captain Chaloux recalled, Lieutenant-Commander LaViolette came to see her privately and confided that Captain Chaloux's casual style with the media did work for her and that Captain Poulin's approach with the media was her main concern.

Captain Poulin indicated to Ombudsman's investigators that Lieutenant-Commander LaViolette's direction to her staff contradicted Defence Administration Order and Directive 2008-2 which sets out the right of individual members to speak to members of the media about what they do.

Lieutenant-Commander LaViolette related that:

> ... if [my staff] received calls from the media ... or conduct interviews related to the DND or the CF they had a responsibility to ensure that these calls were logged in and that I was made aware. I also asked all staff members to re-familiarize themselves with current DAOD's and other Public Affairs hand outs which make it clear that members must advise, either before or after having conducted a media interview, either their chain of command or Public Affairs that an interview will or has taken place." (sic)

Assessment

As described by Captain Poulin, Lieutenant-Commander LaViolette did direct her staff to be less casual with the media. It is unlikely that Lieutenant-Commander LaViolette raised the issue of staff relations with the media independent of events involving Captain

Poulin and the release of his July 9, 1996 memorandum. As Captain Poulin's supervisor within the Media Liaison Office, Lieutenant-Commander LaViolette had a responsibility to ensure he logged contacts with the media as a representative of DPGA and that any contacts that took place on Public Affairs time were consistent with CF policy and orders and regulations. I am satisfied that Lieutenant-Commander LaViolette's actions as a supervisor in this case did not constitute an abuse of her authority.

Allegation 3

Checking phone calls received within Media Liaison Office

Captain Poulin alleges that:

> On or around July 7, 1998, Lieutenant-Commander Laviolette specifically targeted me by checking all phone calls received in the MLO and insinuating, in front of my peers, that I had failed to carry out all of my responsibilities as a public affairs officer in the MLO.
>
> On or around July 7, 1998, at approximately 15:45hrs, I left my cubicle to go to the washroom. When I returned to the MLO, Lieutenant-Commander Laviolette asked me how come the list of callers on the call display of the common phone (996-2353/2354) listed a call from Southam News, among others, but there was no such entry in the MLO daily log? She wanted an explanation. I informed her that, indeed, we had received a call from Southam News, but I had logged it in as the *Ottawa Citizen* because David Pugliese often wrote for the *Citizen*.

Ombudsman's investigators reviewed Captain Poulin's handwritten diary entry for July 7, 1999 and confirmed it describes this event as represented above.

Lieutenant-Commander LaViolette could not recall this event but asserted that if she had concerns about subordinates' performance, she would discuss the concern with them "behind closed doors" and not in front of their peers. Lieutenant-Commander LaViolette further commented that it was part of her duties to be aware of media queries and issues of media interest and she would review the media query log on a regular basis to brief senior management. Other Media Liaison Office staff commented that Lieutenant-Commander LaViolette routinely maintained a close eye on all activities within the Media Liaison Office. As one former subordinate described, she watched office activities "like a hawk." This characteristic was echoed by all of Lieutenant-Commander LaViolette's subordinates. Some current and former staff remarked Lieutenant-Commander LaViolette did "micromanage" on occasion and gave examples; for instance, Lieutenant-Commander LaViolette would point out that the message-waiting indicator was flashing or direct subordinates to place scrap paper in the recycle bin rather than the trash. Despite considerable commentary surrounding Lieutenant-Commander LaViolette's meticulous supervision, however, she was consistently described as "by the book," "fair" and "professional" in dealing with subordinates. No current or former staff member in the Media Liaison Office recalled her treating anyone, including Captain Poulin, in an unprofessional manner.

Assessment

Although Lieutenant-Commander LaViolette stated she has no recollection of questioning Captain Poulin about an apparent discrepancy between the common media phone's call display feature and the media call log, there is no reason to conclude that Captain Poulin's diary entry did not accurately describe this event.

I am not satisfied, however, that Lieutenant-Commander LaViolette's discovery of a discrepancy between the call display feature of the media phone and the media call log would likely be attributable only to Lieutenant-Commander LaViolette's meticulous supervision. The volition required to check the call display feature of the media phone and check it with the media log extends beyond Lieutenant-Commander LaViolette's usual vigilance. More probably, Lieutenant-Commander LaViolette elected to check the call display and verify this information against the log because she held suspicions about whether Captain Poulin had respected the requirement to report discussions with members of the media.

It is probable that suspicions surrounding Captain Poulin's interaction with the media caused his activities to be monitored more closely at times than those of his peers. I am satisfied, however, that Lieutenant-Commander LaViolette's actions did not constitute an abuse of her authority or that they were intended to harass Captain Poulin as a form of retaliation. Her actions appear to have been consistent with her responsibilities to ensure that subordinate staff respected their obligations to log media inquiries.

There is also no evidence to suggest that Lieutenant-Commander LaViolette's questioning of Captain Poulin was done in an abusive or improper fashion or in such a way that would cause other staff members to notice Lieutenant-Commander LaViolette treating Captain Poulin in other than a professional manner. Although Lieutenant-Commander LaViolette's former staff members in the Media Liaison Office indicated that the tension between Captain Poulin and Lieutenant-Commander LaViolette was evident, they unequivocally described her as professional in dealing with Captain Poulin.

Allegation 4

Failure to correct mistaken impression by Captain Poulin that he was on standby to go to Bosnia

Captain Poulin states in his written complaint:

> On or around July 8, 1998, at approximately 15:30 hrs, Lieutenant-Commander Laviolette left her office with Capt. Lynne Chaloux (MLO) and came over to my cubicle. Capt. L. Chaloux said that Capt. Tom St-Denis (public affairs officer) might have mononucleosis and if so, then I would be going to Bosnia instead of him within the next nine days. I informed her it was my understanding that Capt. James Simiana (Public Affairs Materiel) had been placed on stand-by. So, I reasoned, he would be the most likely candidate to go and not me. Lieutenant-Commander Laviolette was standing close by and overheard our conversation but made no effort to reassure me or support my deduction that it should be Capt. J. Simiana who should go if Capt. St-Denis could not.
>
> Lieutenant-Commander Laviolette waited until July 15, 1998 before denying the rumour that Capt. Chaloux had told me. The stress my family and I had to endure during that week was unacceptable.
>
> Lieutenant-Commander LaViolette's actions, as my immediate supervisor and given my situation at the time, was a direct violation of her responsibilities as an Officer under QR&O 4.02(c). It states: "An Officer shall promote the welfare, efficiency and good discipline of all subordinates."

Ombudsman's investigators interviewed Captain Lynne Chaloux at her current place of duty in 1 Canadian Air Division Headquarters, Winnipeg on February 29, 2000. Captain Chaloux first met Captain Poulin in the autumn of 1997 and worked in the Media Liaison Office with him from March 1998 until her deployment to Bosnia in June 1998. Captain Chaloux described having a friendly working relationship with Captain Poulin.

When Ombudsman's investigators questioned Captain Chaloux, she could not understand how Captain Poulin could have concluded he would be deployed to Bosnia. Captain Chaloux related that there was a primary and alternate candidate designated for each deployment and that Captain Poulin was not even an alternate. Captain Chaloux opined that it just did not make sense for Captain Poulin to believe he was to be deployed under the circumstances he described.

The Ombudsman's investigators also related the details of Captain Poulin's diary entry to Captain Chaloux. In an entry dated July 8, 1998, Captain Poulin wrote:

> At approximately 15:30 hours after spending almost forty minutes behind closed doors with Commander Laviolette, Lynne Chaloux said that Captain St. Denis may have mono. If so, she asked what I thought of going to Bosnia.

Captain Chaloux vaguely recalled an issue involving Captain Tom St. Denis being ill during his pre-deployment training, but Captain Chaloux did not believe it had threatened Captain St. Denis' deployment. Captain Chaloux did not provide any information related to Captain Poulin's assertion that he was led to believe he might be deployed to Bosnia on short notice. Subsequently, the Ombudsman's investigators asked if she had ever joked with Captain Poulin about his going to Bosnia. Captain Chaloux did not have a specific memory of doing so, but related that she and Captain Poulin appreciated humour in the workplace. Consequently, Captain Chaloux speculated that, within the context of their working relationship it was "very possible" that she had joked with Captain Poulin about his having to be on the next plane to Bosnia.

Lieutenant-Commander LaViolette stated that she was never aware of any rumours that Captain Poulin was being considered for deployment to Bosnia. Lieutenant-Commander LaViolette added that Captain Poulin had not brought any such concerns to her attention nor was she privy to the conversation that Captain Chaloux might have had with Captain Poulin.

Captain Poulin did not indicate to Ombudsman's investigators or record in his diary that he sought relief or brought this concern to the attention of any CF or DND authority.

An Ombudsman's investigator spoke with Captain St. Denis via telephone on September 1, 2000. Captain St. Denis began pre-deployment training in March 1998 and was deployed to Bosnia from July 1998 to January 1999. Captain St. Denis stated that he was never suspected to have mononucleosis or any other illness and he was unaware that his suitability or fitness for deployment was ever questionable for any reason.

The investigator also spoke with Captain James Simiana by telephone on September 7, 2000 regarding his deployment to Bosnia and whether he had been an alternate candidate for Captain St. Denis. Captain Simiana responded that he was not. He was the alternate for Captain Chaloux and that he deployed to Bosnia to replace her at the conclusion of Captain Chaloux's deployment.

Assessment

I am satisfied that Lieutenant-Commander LaViolette did not unfairly leave Captain Poulin to believe that he would be deployed to Bosnia on short notice.

There is no reason to conclude that Captain Poulin's diary entries are not a true record of this event as he perceived it. I do not conclude, however, that his interpretation was a reasonable one. Captain Poulin related that he believed that he would be deployed to Bosnia as a result of a casual comment from a peer, despite the fact that he was aware that there was another person designated as an alternate for the individual in question. Captain Poulin's allegation is based on his assertion that he believed he would be deployed to an operational theatre for a period of six months on as little as nine days' notice.

One would clearly expect that the first thing a person would do when confronted with such a rumour would be to speak to a supervisor or another member of the chain of command to attempt to verify the information. Although Captain Poulin indicated he and his family endured considerable stress as a result of his belief that he would be deployed to Bosnia, there is no indication that he brought this matter to the attention of any of his supervisors to attempt to verify the information or that he sought relief from any agency or person (i.e., clergy member or social worker) available to him.

Allegation 5

Searching Captain Poulin's office space

Captain Poulin states in his written complaint:

> On or around July 9, 1998, Lieutenant-Commander Laviolette conducted a clandestine inspection of my cubicle after I had left the office at the end of the day. The next morning she stated that I had not kept my taxi "chits" report up to date so she relieved me of that responsibility immediately thereupon.

Captain Poulin also refers to this incident in a paper he wrote for the 1998 Defence Ethics Conference. Specifically, he writes:

> Some people were going through my office space unbeknown to me, for example, and then told me that they had found something, which led them to conclude I was not carrying out my responsibilities correctly. As a result of this surprise inspection, I was rebuked and relieved of certain responsibilities.

Ombudsman's investigators questioned Lieutenant-Commander LaViolette regarding this allegation. Lieutenant-Commander LaViolette responded that she had not conducted an inspection of staff work areas. Rather, she related that Captain Poulin's secondary duty was to administer the section's taxi chits. Lieutenant-Commander LaViolette contends that the chits and the consumption register were kept in Captain Poulin's overhead storage area and that all staff members were aware of this location so they could access the chits when required. Other members of the Media Liaison Office intereviewed by Ombudsman's investigators corroborated this information and the existence of this practice.

Lieutenant-Commander LaViolette stated that on July 9, 1998 she had worked late and missed the last bus home as a result. Consequently, she proceeded to get a taxi chit and noticed that the register had not been updated since June 18, 1998. On July 10, 1998, after informing her superior Colonel Coleman of her intention, she spoke to Captain Poulin about his administration of the taxi chits. Lieutenant-Commander LaViolette informed him that she was responsible for the section's taxi chits and, as this was the third occasion she had discussed the issue with Captain Poulin, she was assuming control of the chits.

Assessment

While the events described did occur, I am satisfied that Lieutenant-Commander LaViolette's actions did not constitute an abuse of her authority. They were not motivated by a desire to retaliate or inflict reprisals upon Captain Poulin. As Captain Poulin's supervisor, she was entitled and had the responsibility to exercise her discretion to deal with matters of job performance and to ensure that Captain Poulin and other subordinates fulfilled their responsibilities. Although Lieutenant-Commander LaViolette could have taken different action in this case, I am satisfied that her exercise of discretion to relieve Captain Poulin of the duty to administer taxi chits was not improper. Other than re-allocating this duty, there is no indication that any other measures were taken against Captain Poulin by Lieutenant-Commander LaViolette.

All staff members of the Media Liaison Office interviewed by my investigators, including Captain Poulin, indicated they were aware the taxi chit vouchers and the consumption log was located in the overhead storage area within Captain Poulin's work area. It was not uncommon for the chits to be required after Captain Poulin had left work for the day and for members of the office to go into this storage area and retrieve a chit. Captain Poulin typically reported earlier for work in the morning and departed at 1500 hours. Accordingly, I am satisfied that Lieutenant-Commander LaViolette's after-hours access to a taxi chit could not be characterized as a "clandestine inspection."

Allegation 6

Attempt to prevent Captain Poulin from giving statement to the CFNIS during ongoing investigation

Captain Poulin states in his written complaint:

> On or around July 29, 1998, Lieutenant-Commander Laviolette tried to prevent me from testifying before the NIS. It eventually took the intervention of her immediate supervisor (the then Cdr B. Frewer) to allow me to attend my own interview with the NIS. Her lack of support in this matter was inappropriate.

> Making it difficult for me to testify before the NIS was a direct violation of QR&O 4.02(c). It states: "An Officer shall promote the welfare, efficiency and good discipline of all subordinates."

Lieutenant-Commander LaViolette acknowledged that she no doubt was frustrated to learn, at the last minute, that Captain Poulin would be required to leave his work responsibilities in order to be interviewed by CFNIS investigators. Lieutenant-Commander LaViolette admits it was likely she had asked Captain Poulin if he could reschedule this interview because he was the only individual on the media phones that day. Lieutenant-Commander LaViolette asserts that she spoke to Captain (Navy) Barry Frewer to request he designate a replacement for Captain Poulin on that afternoon.

Ombudsman's investigators questioned Captain (Navy) Frewer about this allegation during their interview with him on January 31, 2000. He stated that, while Lieutenant-Commander LaViolette had informed him of Captain Poulin's need to meet with the CFNIS, he did not recall any suggestion that such a meeting should be cancelled. Captain Poulin's interview with the CFNIS was conducted as scheduled.

Assessment

I am satisfied that Lieutenant-Commander LaViolette's request for Captain Poulin to reschedule his interview as a result of staffing issues within the Media Liaison Office did not constitute an attempt to prevent Captain Poulin from being interviewed by the CFNIS or to interfere with his participation in the ongoing CFNIS investigations.

Allegation 7

Chastising Captain Poulin for not informing her of his whereabouts

Captain Poulin states in his written complaint that:

> On or around October 9, 1998, Lieutenant-Commander Laviolette chastised me for not keeping her informed as to my whereabouts. Her actions were uncalled for given that the incidents she had referred to had been passed on to either Cdr Frewer and/or Capt. Morissette. The latter, you will note, had even

> put most of my scheduled activities on the MLO monthly calendar.

When interviewed by Ombudsman's investigators in response to this allegation, Lieutenant-Commander LaViolette stated she had discussed with Captain Poulin the need for him to keep her informed when he would be away from the office and of activities he would be participating in that related directly to the CF. Lieutenant-Commander LaViolette further stated that this requirement was expected of everyone in the office. Captain Morissette confirmed to Ombudsman's investigators that this was standard practice and just common sense.

During his interview with Ombudsman's investigators, Captain Morissette stated that Captain Poulin would often inform *him*, rather than Lieutenant-Commander LaViolette, of his activities. Captain Morissette described Captain Poulin's actions in this regard as a "bit of a game." Specifically, Captain Morissette related that, although Captain Poulin could have simply sent an e-mail to Lieutenant-Commander LaViolette, who was his direct supervisor, he would inform Captain Morissette or Captain (Navy) Frewer instead.

Assessment

Captain Poulin, like other members of the office, was expected to keep his immediate supervisor, Lieutenant-Commander LaViolette, informed of his activities and his whereabouts in general. If Lieutenant-Commander LaViolette felt Captain Poulin was not meeting this expectation, it was not inappropriate for her to raise the issue with him, regardless of whether Captain Poulin had informed Captain Morissette or Captain (Navy) Frewer. This allegation is a trivial matter attributable to the ongoing personality conflict that existed between Lieutenant-Commander LaViolette and Captain Poulin. I am satisfied that Lieutenant-Commander LaViolette did not abuse her authority in this instance.

Allegation 8

Discussing conflict with Captain Poulin with other members of Media Liaison Office

Captain Poulin states in his written complaint:

> Between June 17 and my departure from the MLO on or around November 2, 1998, Lieutenant-Commander Laviolette often called my colleagues at their residences at night to inquire about me and my activities during the day in the MLO. This tactic frustrated my colleagues and contributed to an increasingly unhealthy working environment in the MLO. This whole matter was only brought to my attention on or around October 22, 1998 at approximately 08:25 hrs.

Lieutenant-Commander LaViolette stated that Captain Morissette and Captain Chaloux were friends she had known socially for 12 and 6 years respectively and acknowledges that she likely called them dozens of times between June 17, 1998 and November 2, 1998. Lieutenant-Commander LaViolette asserts, however, that on only one or two occasions did she discuss Captain Poulin with Captain Morissette during a phone call to his home after hours.

Lieutenant-Commander LaViolette stated that she spoke with Captain Morissette about the situation in the office and solicited his feedback as her second-in-command. During one such conversation, when she shared some of her concerns regarding her strained relationship with Captain Poulin, Lieutenant-Commander LaViolette first realized that other staff members were being negatively affected by the tension between herself and Captain Poulin. Lieutenant-Commander LaViolette stated that Captain Morissette told her that he felt "caught in the middle" and that he had also related this feeling to Captain Poulin.

Captain Morissette related to Ombudsman's investigators that he had felt caught in between Lieutenant-Commander LaViolette and Captain Poulin and that he had striven to remain neutral and not take sides in their differences.

Captain Morissette recalled Lieutenant-Commander LaViolette calling him at home a few times to "let off steam" and to solicit his opinion regarding the way she was conducting herself with Captain Poulin. Captain Morissette also recalled telling Captain Poulin that Lieutenant-Commander LaViolette had phoned him at home and that he had conveyed to Captain Poulin that he felt frustrated at being caught in between him and Lieutenant-Commander LaViolette.

Assessment

Without any question, the ongoing conflict that existed between Captain Poulin and Lieutenant-Commander LaViolette contributed to an atmosphere that, as Captain Poulin describes, "frustrated [his] colleagues and contributed to an increasingly unhealthy working environment in the MLO."

It is apparent that Lieutenant-Commander LaViolette was unable to resolve the ongoing conflict between herself and Captain Poulin. In fact, many of the efforts she made served only to exacerbate the situation. It is unfortunate that the ongoing personality conflict with Lieutenant-Commander LaViolette appears to have prevented Captain Poulin from accepting comments of support from his immediate chain of command.

Lieutenant-Commander LaViolette clearly was exasperated in her attempts to deal with the conflict between her and Captain Poulin to the point that she sought the advice of Captain Morissette, the second-in-command in the Media Liaison Office, regarding her working relationship with Captain Poulin. At this time, it first became evident to Lieutenant-Commander LaViolette that the conflict was affecting the working environment and other members on her staff. Understandably, Captain Morissette tired of the conflict between Captain Poulin and Lieutenant-Commander LaViolette and it is evident that Captain Morissette struggled not to take sides between them.

The personality conflict between Lieutenant-Commander LaViolette and Captain Poulin was aggravated by the increasing tensions related to Captain Poulin's identification as the author of the July 9, 1996 memorandum and his airing of his concerns about his subsequent treatment by CF leaders to members of the media. It is clear, however, that this personality conflict existed well prior to the press conference during which Captain Poulin's memorandum was made public.

As noted previously, many members of the Media Liaison Office described Lieutenant-Commander LaViolette as a very committed and devoted supervisor who genuinely tried on many occasions to solve this ongoing conflict and who openly sought the advice of others with a view to trying to ameliorate the situation. It appears, however, that she was sufficiently occupied by the ongoing conflict with Captain Poulin that she was not sensitive to how her other subordinates might be affected.

Lieutenant-Commander LaViolette's efforts to improve her working relationship with Captain Poulin were unsuccessful. I am satisfied, however, that her discussions of this matter with her second-in-command did not directly contribute to an unhealthy work environment or that they represented acts of retaliation or reprisal resulting from Captain Poulin's authorship of the June 9, 1996 memorandum.

Allegation 9

Failure to inform Captain Poulin of the CFNIS press conference to release results of ongoing investigations into allegations against Lieutenant-General Leach and Colonel Labbé

Captain Poulin alleges that:

> In contrast to the support given by DGPA to Lt.-Gen. Leach on or around October 26, 1998 when the NIS prepared to issue their News Release (NR CFPM-98.044) about the two relevant NIS investigations, Lieutenant-Commander LaViolette would not even show me the subject News Release until after it had been distributed to the media.
>
> Fearful that I would make a comment to the media about the NIS News Release (CFPM-98.044) she deliberately withheld information from me to the effect that the media were at NDHQ in the concourse at approximately 15:30hrs on or around October 26, 1998. As an officer in the MLO I, like everyone else in the MLO, should have been informed of the subject news conference. Instead, I was singled out and ostracised by the Head MLO.
>
> Her actions also violated the Public Affairs Defence Administrative Orders and Directives (2008-2) dated March 1, 1998, "… empowers and encourages DND employees and CF members to speak to the media about what they do in their official capacity as a valuable and important way to provide Canadians with a richer understanding of the day-to-day operations and contributions of the CF and DND."

Lieutenant-Commander LaViolette provided a written statement regarding this allegation:

> At approximately 0815 on 26 Oct, I spoke to Captain Bissonnette from the NIS who advised me that they would be putting out a release on the findings of an investigation that morning. I was provided with this information as I am the person responsible for the distribution of releases to the media. [Captain Bissonnette] advised me that other individuals would be told of this release as they were directly implicated in the investigation. Captain Poulin was to be one of these individuals. Later that morning, at approximately 0940 Captain Bissonnette provided me with a copy of the release. I asked him if I could advise my superior that it was going to be issued today and he said yes. Shortly afterwards I advised Cdr Frewer of such.
>
> At 1135, I asked to speak to Captain Poulin in my office. I wanted to ensure that he had received a call from the NIS before the release went out. He told me that the NIS had advised him. The CFPM is independent and it was not up to me to show Captain Poulin the release. I did however make sure he had been briefed by the NIS previous to the document being sent to media. (sic)

Lieutenant-Commander LaViolette also strongly disagreed with Captain Poulin's assertion that, because she was fearful of him making a comment to the media, she withheld information regarding the results of the CFNIS investigations. In response, Lieutenant-Commander LaViolette states:

> In the discussion I had with [Captain Poulin] earlier that day, I told him that I thought it would be inappropriate for him to be answering media calls directly as he was a major player in the issue. I told him that the MLOs would answer calls and any request received asking to speak to him would be passed on to him and it would be up to him to decide if he would speak to them or not.

Lieutenant-Commander LaViolette further indicated she believed the Canadian Forces Provost Marshal (CFPM) was involved in the media scrum and that it was organized by staff from the CFPM's office. The CFNIS employs a military police officer who has undergone training as a media spokesperson to conduct relations with the media. Lieutenant-Commander LaViolette did not recall whether Media Liaison Office staff assisted, but asserted that Captain Poulin's participation in the press conference to release results of the CFNIS investigations would not constitute "what he does in his official capacity."

Captain Morissette also described to Ombudsman's investigators the procedures implemented regarding Captain Poulin's media liaison activities. Captain Morissette stated that Captain Poulin was instructed not to answer the media lines directly for the reason that Captain Poulin had himself become the subject of considerable media interest. Consequently, it was not considered appropriate for Captain Poulin to be answering media calls directly in his capacity as a public affairs officer for the CF. Calls were to be fielded by other staff members and those queries that were not related to Captain Poulin, Colonel Labbé or Lieutenant-General Leach were referred to Captain Poulin to handle in his capacity as a public affairs officer.

Captain Morissette related that, in an effort to balance Captain Poulin's role as a public affairs officer with his right to communicate with the media on matters that pertained to him personally, media queries that concerned Captain Poulin personally were referred to him to respond to if he wished.

Assessment

I am not satisfied that Lieutenant-Commander LaViolette's actions as head of the Media Liaison Office constituted an abuse of her authority in this instance.

Lieutenant-Commander LaViolette was provided with a copy of the CFNIS press release solely in her capacity as the head of the Media Liaison Office and not as the supervisor to an individual involved in the investigations. I am satisfied with Lieutenant-Commander LaViolette's explanation that, as supervisor in the Media Liaison Office, she made the decision that media inquiries related to this matter would be referred to other members of the office and not to Captain Poulin because of his involvement in this matter. As the supervisor, Lieutenant-Commander LaViolette was entitled and indeed had the responsibility to designate which staff members were assigned to deal with specific media issues as she deemed appropriate. I am satisfied that Lieutenant-Commander LaViolette did not act improperly by not giving Captain Poulin an advance copy of the CFNIS press release prior to its release to the media. I am not satisfied that Lieutenant-Commander LaViolette had any obligation to give Captain Poulin an advance copy of the CFNIS press release, nor am I satisfied that Lieutenant-Commander LaViolette sought to prevent Captain Poulin from speaking to the media about his experiences as the author of the July 9, 1996 memorandum.

Allegation 10

Withholding message from Captain Poulin's wife in relation to a family emergency until meeting to discuss unreported comments to the media was concluded, and false statement in subsequent memorandum relating to this incident

Captain Poulin states in his written complaint:

> On or around October 27, 1998, Lieutenant-Commander LaViolette deliberately withheld information from me to the effect that my wife had called and said that I needed to call home ASAP because there was a "family emergency."
>
> Lieutenant-Commander LaViolette's actions in this instance was also a direct violation of QR& O 4.02(c). It states: "An Officer shall promote the welfare, efficiency and good discipline of all subordinates."

Captain Poulin also states in his written complaint:

> In [Lieutenant-Commander LaViolette's] memo dated November 13, 1998, addressed to the then Cdr. Frewer she stated that: "All three confirmed that I had not been made aware that the call from his wife was urgent ... " was incorrect. In fact, she had been told that it was a "family emergency. "

Ombudsman's investigators interviewed Lieutenant (Navy) Ken MacKillop as a witness to this allegation on December 1, 1999. In October 1998, Lieutenant (Navy) MacKillop had been in the Media Liaison Office for about one month as an on-job-training candidate under Captain Morissette and Captain Poulin.

When asked by my investigators whether he had information relating to an emergency call that was received from Captain Poulin's wife, Lieutenant (Navy) MacKillop stated he had been the one to receive this call and that he was the only one in the office at that moment. Lieutenant (Navy) MacKillop stated:

> ... this particular morning I believe I was in the office by myself. A call came in and I answered it. It was

> Captain Poulin's wife who indicated that she'd like Captain Poulin to call her as soon as possible because it was an emergency. I then hung up the phone and started walking around the floor — I knew he had been in the office already — to see if I could locate him.

Lieutenant (Navy) MacKillop recalled that he was "asking a few people around the floor if they had seen Captain Poulin because his wife wanted him to call her right away ... " but he did not find Captain Poulin. Upon returning to the Media Liaison Office, Lieutenant (Navy) MacKillop stated, he found that Captain Morissette had arrived and informed him of the telephone message for Captain Poulin. Lieutenant (Navy) MacKillop stated he believed Lieutenant-Commander LaViolette was not in the office when he returned. He was uncertain if Lieutenant-Commander LaViolette was made aware of the call but assumed she was because he had "... been running around telling folks so I assumed folks were aware ... but I couldn't say that [Lieutenant-Commander LaViolette] knew or not."

In a memorandum dated 28 October 1998, outlining his concerns about this incident, Captain Poulin wrote:

> Subsequent to the above-cited 27 October meeting, I was told that my wife had called earlier that morning while I was away saying that there was a "family emergency" and that I needed to "phone her immediately." The reason I did not know about the urgency of my wife's request was that L.-Cdr. Laviolette had arbitrarily decided that her meeting with me to discuss her displeasure with my performance was more important than my family. Consequently, L.-Cdr. Laviolette told Lt(N) Ken MacKillop to keep quiet about the phone call until she had spoken to me.

Lieutenant-Commander LaViolette told Ombudsman's investigators that when she initially received Captain Poulin's memorandum dated October 28, 1998, she informed him that she was unaware that the call had been urgent. Based on this discussion, Captain Poulin agreed to rewrite his memorandum.

In his written complaint, Captain Poulin further asserts:

> Later that week, two civilian employees (Paul Burbridge and Tim Dickman) who worked in the MLO (media monitoring) when this incident occurred approached me and said they distinctly heard Lt(N)

> MacKillop tell L.-Cdr. Laviolette that it was a "family emergency" and that she had directed that she would see me first before I was to be given that message. When I approached Lt(N) MacKillop with this information provided by other witnesses, he stated to me that he never said he had not told her it was a "family emergency" but now he simply could not recall whether he had told her or not.

When interviewed by Ombudsman's investigators, Lieutenant-Commander LaViolette maintained that, while she absolutely recalled Lieutenant (Navy) MacKillop informing her Captain Poulin's wife had called, she did not know the call had been urgent. Lieutenant-Commander LaViolette further stated that, after speaking with Captain Poulin, she asked him to pass this information along to his wife as well. Lieutenant-Commander LaViolette stated that she believed at the time that they had resolved this issue.

Investigators from this Office asked Captain Morissette if he recalled the issue of Captain Poulin's wife leaving a message for Captain Poulin about a family emergency. Captain Morissette responded that he remembers that happening but it was not him who took the call. Captain Morissette stated that either Lieutenant (Navy) MacKillop or John Coppard was present when Captain Poulin's wife called. Captain Morissette also recalled the meeting in Lieutenant-Commander LaViolette's office in which Lieutenant-Commander LaViolette addressed her concerns about Captain Poulin's personal communications with the media. He related that, at the conclusion of the meeting, Lieutenant-Commander LaViolette informed Captain Poulin that his wife had called.

Ombudsman's investigators interviewed Mr. Paul Burbridge as a witness to this allegation on November 19, 1999. Mr. Burbridge performs electronic media monitoring within Public Affairs. His work area was co-located within the Media Liaison Office during the time Captain Poulin worked as a member of the staff of the Media Liaison Office. Mr. Burbridge stated that he perceived Lieutenant-Commander LaViolette to scrutinize Captain Poulin's activities more closely than she would others' activities.

Mr. Burbridge stated that he recalled the issue of Captain Poulin's wife leaving a message for Captain Poulin to call home because of a family emergency. Mr. Burbridge stated that he believed Captain Morissette had taken the call and announced to the office that there was a family emergency and Captain Poulin should phone home immediately. Mr. Burbridge stated:

> ... Lieutenant-Commander LaViolette, when she overheard this, asked everyone that when Captain Poulin returned to the office, that he not be told about this message because she needed to see him urgently ... that she'd tell him about the message after their conversation.

Ombudsman's investigators interviewed Mr. Tim Dickman as a witness to this allegation. Mr. Dickman is a computer system administrator and his office was co-located with the Media Liaison Office at the time Captain Poulin was a member of the staff of the Media Liaison Office.

Mr. Dickman stated:

> I believe it was Captain Jean Morissette that received the call and he related it over to his co-worker — I don't remember who that was — that when Bruce comes in, tell him to call his wife [because] there was a family emergency ... At that point, Lieutenant-Commander Denise LaViolette came out of her office and said, "No, don't give him the message. I want to see him first."

Both Mr. Dickman and Mr. Burbridge indicated their support for Captain Poulin and they both stated Lieutenant-Commander LaViolette had directed that Captain Poulin was not to be told of the call but, rather, she would inform him once she had completed her meeting with him.

When Captain Poulin returned to the Media Liaison Office, Lieutenant-Commander LaViolette immediately spoke with him about a media interview he had allegedly given and not reported to his chain of command. Lieutenant-Commander LaViolette informed Captain Poulin at the conclusion of the meeting that his wife had called. In her response to the interim report, Lieutenant-Commander LaViolette noted that she had waited for Captain Poulin for close to one hour, that his wife had not called back during this time, that her meeting with Captain Poulin and Captain Morissette lasted less than 10 minutes and that Captain Poulin was able to call his wife at the end of the meeting.

Assessment

Although Lieutenant-Commander LaViolette appears not to have been in the Media Liaison Office at the time of the phone call from Captain Poulin's wife, clearly she was aware there was a message for Captain Poulin to call home. There is conflicting evidence as to whether she was aware of the fact that Captain Poulin's wife had said that there was a "family emergency."

Whether or not Lieutenant-Commander LaViolette was aware of the fact that Captain Poulin's wife had called in relation to a family emergency, there appears to be no justification as to why he was not given the message and an opportunity to call his wife prior to the meeting with Lieutenant-Commander LaViolette. A number of staff members were aware of the message and proceeded to search for Captain Poulin to give it to him. Lieutenant-Commander LaViolette clearly directed staff not to pass the telephone message to Captain Poulin. I am satisfied that, in doing this, Lieutenant-Commander LaViolette went beyond the limits of her authority. There was no justification provided as to why the meeting could not have waited until Captain Poulin was given an opportunity to receive the message and return his wife's call.

It should be noted that Lieutenant-Commander LaViolette's actions do not appear to have been made in bad faith or out of any deliberate desire to harass or inflict reprisals on Captain Poulin. Lieutenant-Commander LaViolette's omission in this instance, although not to be condoned, appears attributable to the ongoing conflict between her and Captain Poulin and the increasing tensions it produced.

Allegation 11

Indicating that Captain Poulin was a liar in front of another member of the Media Liaison Office

Captain Poulin states in his written complaint that:

> On or around October 27, 1998, Lieutenant-Commander LaViolette called me a "liar" in front of one of my peers. As a superior officer and my immediate supervisor, her action in this instance was unacceptable.

Captain Poulin clarified for Ombudsman's investigators that the peer referred to in Captain Poulin's statement was Captain Jean Morissette.

Captain Morissette recalled being present at a meeting with Captain Poulin in Lieutenant-Commander LaViolette's office, in which Lieutenant-Commander LaViolette sought confirmation from

Captain Morissette about whether Captain Poulin had been speaking to the media without entering the media contacts into the media log as required by media liaison policy. Captain Morissette stated:

> ... at a certain point, [LaViolette] said ... Jean, do you get the feeling [Bruce has] been speaking to the media without entering it into the log book? I said yes because I could hear him sometimes talking to the media and trying to elicit some interest in his story. So then [LaViolette] asked me, Jean, do you know for sure ... yes or no whether he spoke to the media? The truth was that I had really noticed ... that happened. (*translation of interview conducted in French*)

Captain Morissette recalled that Lieutenant-Commander LaViolette suggested "... [Captain Poulin] was a liar because [he was] not telling [her] everything that's going on the way it's been happening ... " Captain Morissette related further that the meeting was "tense but controlled."

Lieutenant-Commander LaViolette provided a written reply to the allegation during her interview with investigators from this Office on February 17, 2000. Lieutenant-Commander LaViolette writes:

> At 1120 on 27 Oct, I asked to see both Captain Morissette (my 2iC who I wanted there as a witness) and Captain Poulin. I asked Captain Poulin to clarify points that had appeared in the media that morning.
>
> I asked him why he had told me the day before that he did not receive media calls on his personal line when the Citizen article indicated otherwise. He repeated that he did not. I then asked him how media would have gotten his direct line. He told me I would have to ask them. I then asked Captain Morissette if he had ever seen Captain Poulin receive calls on his direct line. Captain Morissette answered yes. I also told Captain Poulin that I myself had seen him receiving media calls on his personal line. I asked Captain Poulin why he appeared to be lying to me. He said he was not lying.

Assessment

I am satisfied that Lieutenant-Commander LaViolette clearly indicated during her meeting with Captain Poulin and Captain Morissette, the second-in-command of the Media Liaison Office, that she believed Captain Poulin was lying to her when he indicated he had not been receiving calls from the media on his personal line while working in the Media Liaison Office. The basis for this meeting was Lieutenant-Commander LaViolette's concern that Captain Poulin was engaging in contact with members of the media during office hours and in his professional capacity as a CF public affairs officer without logging the media inquiries as required by media liaison policy or reporting any personal comments made to the media as required of all CF members.

As supervisor in the Media Liaison Office, Lieutenant-Commander LaViolette was acting within her authority when she confronted Captain Poulin, who was a member of her staff, with her belief that he had been violating the policies. Her indication to him that she did not believe his denial and that she felt that he was lying was based on her own observations and the observations provided by Captain Morissette. Captain Morissette was the second-in-command of the Media Liaison Office and was present during the meeting. I am satisfied that Lieutenant-Commander LaViolette's actions in this instance did not constitute an abuse of her authority.

Allegation 12

Change in Media Liaison Office policy to require that logs of media inquiries about Captain Poulin record what line the call was received on

Captain Poulin states in his written complaint:

> On or around November 4, 1998, Lieutenant-Commander Laviolette unilaterally changed the MLO policy regarding media queries for me. She told her staff that they would have to include what phone line was used by media seeking to interview me was unacceptable and contrary to MLO policy. She deliberately chose this tactic in her attempt to discredit me.
>
> This was the first time in 1,729 requests (since March 1998) that it was now deemed necessary to include which phone line the media had used to make a request.

Captain Poulin further stated that, when he learned of this entry in the media request log, he brought this to the attention of Captain (Navy) Frewer, who agreed it was inappropriate and indicated he would speak to Lieutenant-Commander LaViolette about Captain Poulin's concern.

Lieutenant-Commander LaViolette provided a written response and was also questioned by the Ombudsman's investigators regarding this allegation. Lieutenant-Commander LaViolette states:

> I recall having a conversation with the MLOs (new personnel) which included reminding everyone of my directive that I did not want media calls to come in on personal lines. Once again this was a long-standing procedure in the MLO. There are two media lines equipped with voice mail that are designated for media....I do not recall telling anyone to log in which line the call came through when receiving a request to speak to Captain Poulin.
>
> ... Captain Poulin did not come to see me with regards to this issue. This item refers to a media request dated 04 Nov 98 14:44, from Michael McAuliffe. The call was received by Lt(N) Vanier and handled by him. On the initial request form a line was included that indicated that this call had come in on the desk officer's personal line. As soon as Cdr Frewer brought this to my attention I had the line removed and spoke to Captain Poulin about it. This matter appeared to be closed.
>
> There was nothing malicious about this incident and you will note that no other media calls from Captain Poulin ever included what phone line the call had come through. This was simply a misunderstanding possibly caused by my reiterating the policy of not receiving media calls on personal lines.

Lieutenant-Commander LaViolette further maintains that:

> At no time did I initiate, approve or was told to initiate any such policy. Direction given to Media Liaison Officers remains as it has always been; media queries are logged in, processed and answered in a timely fashion.

Ombudsman's investigators interviewed Lieutenant (Navy) Yves Vanier in the Conference Room of the Ombudsman's Office located at 185 Sparks Street in Ottawa on January 11, 2000. Lieutenant (Navy) Vanier began working as Media Liaison Officer in February 1999 under Lieutenant-Commander LaViolette. In November 1998, Lieutenant (Navy) Vanier attended a month-long period of on-job training in the Media Liaison Office. Captain Morissette was responsible for Lieutenant (Navy) Vanier's on-job training.

Lieutenant (Navy) Vanier stated that all media requests were treated in the same manner and that the direction given to him as a new member of the Media Liaison Office was to treat media queries for Captain Poulin like any others. He further stated that the media interest in Captain Poulin was well known. Lieutenant (Navy) Vanier related that, for media requests that pertained to Captain Poulin personally, a request to speak with Captain Poulin would be referred to Captain Poulin or his immediate supervisor.

The procedure described by Lieutenant (Navy) Vanier is consistent with how all media requests to speak with any CF member are handled by the Media Liaison Office. Once a referral is made, individual members may decide whether they wish to speak to the media or not. If a member chooses to speak to the media, however, the member is required to adhere to Defence Administration Order and Directive 2008-2, which defines the scope and responsibilities governing CF members' communications with members of the media.

Ombudsman's investigators also interviewed Captain Marc Thériault as a witness to this allegation in the boardroom of the Ombudsman's Office located at 55 Murray Street in Ottawa on October 26, 2000. Captain Thériault had undergone on-job training in the Media Liaison Office in November 1998. Captain Thériault also stated that he had subsequently worked with Captain Poulin in another section for an 11-month period concluding in November 1999. Captain Thériault commented that, while he was sensitive to some tension between Captain Poulin and Lieutenant-Commander LaViolette during his time in the Media Liaison Office, he did not recall observing any specific interaction between the two.

When asked about the process regarding the logging of media queries pertaining to Captain Poulin, Captain Thériault indicated that requests concerning Captain Poulin were treated in the same manner as any other media request. Ombudsman's investigators asked if the line on which an incoming call was received was recorded in the media request. Captain Thériault responded it was not and that the log did not include space for that information. Captain Thériault could not recall having received any direction to record the line used for incoming calls nor could he recall Captain Poulin questioning him about this event.

Assessment

I am satisfied the allegation that Lieutenant-Commander LaViolette unilaterally changed the Media Liaison Office policy to log whether Captain Poulin received media calls on his personal line is not substantiated.

My investigators found one occasion on which the specific phone line was noted in the media query log. On this one occasion, an incoming media call had dialled in on Captain Poulin's designated line rather than on one of the two phones dedicated to media queries. When Captain Poulin became aware of the note in the media query log, he reported it to Lieutenant-Commander LaViolette's immediate supervisor, Captain (Navy) Barry Frewer. Captain (Navy) Frewer had agreed there was no need to record the phone line used for a media query and had spoken to Lieutenant-Commander LaViolette. Lieutenant-Commander LaViolette agreed and deduced that the entry was attributable to a misunderstanding on the part of Lieutenant (Navy) Vanier, possibly caused by Lieutenant-Commander LaViolette's recent reminder to her staff to ensure media queries were received on the designated media lines rather than on staff members' personal lines.

While it is understandable that Captain Poulin was sensitive to Media Liaison Office staff recording the receipt of calls on his personal phone line, I am not satisfied that this action was a result of a change in office policy motivated by an intent to discredit Captain Poulin.

Allegation 13

Change in Media Liaison Office policy not to log calls from members of the media who requested to personally speak with Captain Poulin

Captain Poulin states in his written complaint to this Office:

> On or around December 8, 1998, I spoke with Capt. Scott Lundy (OJT- MLO). He asked if I had received a phone call from a journalist earlier in the morning? I said no but that would not be a problem because I would come over to the MLO and get the pertinent information from the MLO Daily Log. Capt. Lundy said that that would not be necessary because he had not registered the call. I asked him to explain his actions. He responded stating that for the last 1 ½ weeks he

> had been instructed to no longer register the call whenever a journalist or other person called and asked to speak with me personally.
>
> On or around December 10, 1998, at approximately 09:00hrs, I approached Capt. J. Morissette in the DGPA Conference room and asked him about what I perceived to be a new policy (within) the MLO regarding phone calls for me from journalists (see entry on or around December 8, 1998). He said that the MLO were using their "discretionary powers" whether they needed to register any calls from journalists.
>
> Lieutenant-Commander Laviolette's initiation or tacit approval of a policy (on or around December 10, 1998) to grant more "discretionary powers" as to whether her MLO staff should register media phone calls for me in the MLO Daily Log directly contravened the MLO Office Functions — Detailed Procedures for MLO and DGPA DO checklist. It states under "Media Queries" that: "Update the Daily Media Query Log upon reception of the request."
>
> Lieutenant-Commander Laviolette's actions in this instance was also a direct violation of QR& O 4.02(c). It states: "An Officer shall promote the welfare, efficiency and good discipline of all subordinates."

In response to this allegation, Lieutenant-Commander LaViolette provided the following information in a written statement to Ombudsman's investigators:

> This statement is absolutely false. At no time did I initiate, approve or was told to initiate any such policy. Direction given to Media Liaison Officers remains as it has always been; media queries are logged in, processed and answered in a timely fashion.

Captain Morissette also stated to Ombudsman's investigators that all queries, including those concerning Captain Poulin, were handled in the same manner.

Ombudsman's investigators interviewed Captain Scott Lundy as a witness to this allegation on December 2, 1999. Captain Lundy underwent on-job training in the Media Liaison Office in December 1998. Captain Lundy is a Public Affairs officer currently working as the editor of the *Maple Leaf*, an official CF newspaper.

Captain Lundy was asked about the procedure for logging in media calls and whether the same practice applied in handling media requests concerning Captain Poulin. Captain Lundy responded that all queries were logged in. Captain Lundy was asked if he was ever instructed that calls concerning Captain Poulin were not to be logged in. Captain Lundy responded he "was not specifically given direction to that effect ..."

When interviewed by Ombudsman's investigators, Lieutenant (Navy) Vanier recalled one occasion on which a media query related to Captain Poulin was not logged in. The media query had concerned Captain Poulin's private activities as a minor hockey coach and the call was forwarded to Captain Poulin and not logged in because it did not pertain to the CF or DND.

In a review of the media logs from November 4, 1998 through January 13, 2000, Ombudsman's investigators located 13 entries indicating media queries concerning Captain Poulin.

Assessment

A review of the media logs during the time period in question clearly indicates that media inquiries addressed to Captain Poulin were being logged. In light of Lieutenant-Commander LaViolette's concerns, described previously, that Captain Poulin might be liaising with members of the media and not recording these contacts as required by the directive, it seems unlikely that she would order a change in policy to make it discretionary for staff to log any media inquiries in relation to him.

I am satisfied, based on the totality of the evidence collected by my investigators, that Lieutenant-Commander LaViolette did not approve or initiate any change in the Media Liaison Office policy regarding the logging of media inquiries.

Allegation 14

Sanctioning or participating in destruction of official Media Response Lines

Captain Poulin states in his written complaint:

> On or around July 21, 1998, Lieutenant-Commander Laviolette sanctioned and took part in the altering and/or destruction of Media Response Lines (MRLs).

> The latter were official DND/CF documents used in the Media Liaison Office.

The allegation of destruction of the Media Response Lines was investigated under the *Access to Information Act* and deemed to be unfounded on December 21, 1999. Ombudsman's investigators obtained a copy of the Information Commissioner's letter of findings. The results of the investigation concluded:

> There is no evidence that anyone altered or destroyed MRLs which were relevant to an access request, or ordered anyone else to do so. A number of MRLs were removed from the MLO binders. This was part of a re-organization of the various MLO binders to make the MRLs more easily accessible as well as to ensure the MLO MRLs coincided with the master MRL file. Some unnumbered MRLs were also removed and sent back to account managers to undergo the approval process or were verified with the Director Public Affairs Plans Operations Secretary as having been assigned a number.
>
> However, there is some confusion amongst DGPA staff about whether or not an access request for MRLs encompasses draft MRLs. In my view, a request for MRLs for a specific period covers, as well, all draft MRLs on the relevant topic in existence at that time. While it is possible that a draft MRL could undergo changes during the sign-off process, it should be forwarded for processing in response to the access request as it existed on the day the request was received. In the cases we reviewed, some draft MRLs that should have been provided and process as relevant were not. It is my view that this failure was the result of a lack of understanding of the requirements of the Act and not due to bad faith. (sic)

Lieutenant-Commander LaViolette further provided that:

> Captain Poulin's concerns with regards to this subject were never brought to my attention or, as far as I know, to the attention of anyone in DGPA. Instead, a complaint was made to the Access to Information Commissioner several months after this event.

Captain Poulin's diary entry of July 21, 1998 reflects the circumstances leading to the complaint which was submitted to the Information Commissioner. Captain Poulin wrote:

> Yesterday I opened my email and found a request by Simone Mcleod for several MRLs because there had been an ATI requesting them. In my attempt to be helpful, I went and got some MRLs we had in the MLO binders and gave copies to Simone.
>
> Today, I saw Simone and we talked about the MRL without a number by Ed King on the Poulin memo. She said that Maj. Mackie had expressed concerns over it. I then went and saw Mackie and he said he went to the NIS and compared ours with theirs. In the end he considered Ed King's version as a "draft" and therefore it should not be included in the current ATI request. I replied that this MRL had already been given through another ATI and it was considered "official" in the sense that we have used it in the MLO and consequently it should be given in the current ATI request.
>
> L.-Cdr. Laviolette showed up and supported my position saying the whole matter was a VCDS issue and all MRLs in the MLO and placed in the binders were deemed official. Maj. Mackie did not agree but he said he would call Ed King and find out how this MRL was approved.
>
> In the meantime, Laviolette, Leblanc and I went through every binder in the MLO and looked to see if there were any MRLs without numbers. We found approx. 20 and (three were Ed King, two Maj. Tremblay). At approx. 1200 hrs Mackie saw Laviolette in her office. After 15 min she came out and said that Ed King told Mackie that the MRL was prepared at end of day and Col. Coleman had seen it and got the necessary approval from his end of day DM meeting. At the 1520 hrs meeting the unnumbered MRLs were given back to the account managers and they were asked to track down sign-off sheets and numbers. I asked if she had kept a copy of the MRLs. She said she has a copy and Simone kept a copy of them. Slowly we began receiving some by end of day.

Ombudsman's investigators interviewed Lieutenant-Commander Ed King as both a subject and witness to this investigation on January 24, 2000. Lieutenant-Commander King stated he was interviewed by investigators from Access to Information regarding this issue during their investigation two months earlier. Lieutenant-Commander King informed the Ombudsman's investigators that a Media Response Line is only used to respond to media queries once all sign-offs are received from various authorities. Once this approval is received, Media Response Lines are passed to Ms. Simone McLeod, secretary to the Director of Public Affairs Planning and Operations, who would assign a unique Media Response Line number. Lieutenant-Commander King stated to Ombudsman's investigators that he has, upon receiving all requisite sign-offs, used a Media Response Line and forgotten to pass the document to Ms. McLeod to have a Media Response Line number assigned.

My investigators spoke with Ms. Simone McLeod on January 14, 2000 as a witness to this allegation. Ms. McLeod works as the secretary to the Director of Public Affairs Planning and Operations. Ms. McLeod is the individual responsible for appending a unique tracking number to the completed Media Response Lines. Ms. McLeod related that at one time, Lieutenant-Commander King seemed unaware that he was supposed to obtain a Media Response Line number from her. After speaking with him, she noted that Lieutenant-Commander King began obtaining a Media Response Line number as required.

Captain (Navy) Frewer related that as a result of the Information Commissioner's investigation, procedures concerning the administration of Media Response Lines were implemented to ensure draft copies were retained.

Assessment

I am satisfied that the allegation that Lieutenant-Commander LaViolette took part or sanctioned the destruction or altering of Media Response Lines is not substantiated. Rather, the evidence appears to indicate that Lieutenant-Commander LaViolette was supportive of Captain Poulin's assertion that Media Response Lines used to provide responses to media queries should be retained whether or not they contained the appropriate number.

B. Allegations against Colonel (Retired) R. Coleman

In his written complaint submitted to this Office, Captain Poulin indicates that then Colonel Coleman, while he was Acting Director General Public Affairs and, as such, a superior to both Lieutenant-Commander LaViolette and Captain Poulin, failed to take action upon receipt of Captain Poulin's complaints regarding Lieutenant-

Commander LaViolette. Captain Poulin also suggests that Colonel Coleman leaked information about Captain Poulin's medical status and military performance.

Mr. Coleman responded to the interim report by telephone on March 20, 2001, indicating that he had no comments in response.

Allegation 1

Failure to deal with harassment complaints

Captain Poulin states in his written complaint:

> On or around June 25, 1998, and again on October 28, 1998, I reported incidents of harassment to my superiors to no avail. Col. Coleman had a duty, under QR&O 4.02 (c) to promote the welfare, efficiency and good discipline of all that are subordinate to them. Consequently, COs and supervisors at all levels must endeavour to provide work environments free from harassment.
>
> Under CFAO 19.39 (para. 37), Col. Coleman also had an obligation to Inform Capt.(N) Harper: "A military superior who receives a formal complaint directly, or from another person, shall advise his or her CO immediately (i.e. Capt.(N) Harper) that a complaint has been made and take immediate action necessary to correct the situation."
>
> While Col. Coleman did not believe that this was a case of unacceptable conduct on the part of Lieutenant-Commander Laviolette, Capt.(N) Harper clearly felt otherwise in her memo(5000-2/99-46 (SO Corp Svcs) dated August 10, 1999. In fact, she cited two incidents that I had brought to the attention to Col. Coleman as " ... behaviour contrary to that required IAW CFAO 19-39."

Ombudsman's investigators interviewed Mr. Coleman as a subject of and witness to this complaint. The interview was conducted in the boardroom of the Ombudsman's Office located at 185 Sparks Street, Ottawa, on February 8, 2000.

Mr. Coleman recalled that when Captain Poulin's memorandum first became public, Lieutenant-Commander LaViolette had suggested he call Captain Poulin in to reassure him he had done the right thing and that Public Affairs supported him. Mr. Coleman stated he believed this to be good advice and he did have this discussion with Captain Poulin. During his interview with Ombudsman's investigators on March 8, 2000, Captain Poulin confirmed that Mr. Coleman made such comments to him.

Mr. Coleman told Ombudsman's investigators that he was aware of problems between Captain Poulin and Lieutenant-Commander LaViolette. Colonel Coleman had sought to determine whether Captain Poulin had advised his superiors of media interviews that were televised on 17 and 18 June 1998. Mr. Coleman recalled:

> ... when I asked [LaViolette] to call [Poulin] ... and ask about those interviews she reported back to me the next day that he was quite incensed that we were challenging his integrity ... every time she would do something as a supervisor, he would interpret it as being some kind of harassment ... It got to the point where she felt he was lying to her and he felt she was persecuting him. [LaViolette] came to see me; I talked to her. I brought [Poulin] in and talked to him ...

Mr. Coleman recalled both Captain Poulin and Lieutenant-Commander LaViolette were also submitting memoranda in relation to the ongoing conflict between the two at this time.

Copies of Captain Poulin's memoranda dated June 25, 1998 and October 28, 1998 and Lieutenant-Commander LaViolette's memorandum dated June 26, 1998 were provided to Ombudsman's investigators by Mr. Coleman's successor at DGPA, Captain (Navy) Frewer. In his memorandum dated June 25, 1998, Captain Poulin states, "I will interpret any further interaction with Lieutenant-Commander LaViolette related to my July 9, 1996 memorandum, addressed to Major-General Leach, as harassment of me by her." Mr. Coleman's hand-written note on this memorandum dated June 26, 1998 indicates that he spoke to Captain Poulin and Lieutenant-Commander LaViolette and informed them that the topic was "off-limits" while the CFNIS investigations were ongoing and that they must find a way of working together. Mr. Coleman noted that both had acknowledged their agreement and there is no evidence of any further intervention by Mr. Coleman.

Captain Poulin's memorandum dated October 28, 1998, entitled "Request immediate transfer from Media Liaison Office," was addressed to Captain (Navy) Frewer through Lieutenant-Commander LaViolette. Captain Poulin's memorandum states "the aim of this memorandum is to formalize my request for an immediate transfer from the Media Liaison Office." Captain Poulin states that he "will interpret any further inaction on your part as a policy to continue subjecting me to a hostile and unhealthy work environment."

Captain (Navy) Frewer provided a copy of Captain Poulin's memorandum dated October 28, 1998 to Ombudsman's investigators. This document includes hand-written minutes by Lieutenant-Commander LaViolette and Captain (Navy) Frewer, both dated October 28, 1998. Lieutenant-Commander LaViolette's minute to Captain (Navy) Frewer dated October 28, 1998 states, "I fully support Captain Poulin's request for a transfer." Captain Frewer's minute to Mr. Coleman states, "As requested by Captain Poulin and supported by his supervisor, I am making the strongest recommendation that Captain Poulin be transferred from the media liaison office now." Captain Poulin was transferred to the Y2K Public Affairs section at the beginning of November 1998.

On July 5, 1999, Captain Poulin submitted an application for redress of grievance in response to a Performance Evaluation Report he was contesting. At that time, he referred to the fact that his rating officer, Lieutenant-Commander LaViolette, "had criticized me and belittled me on several occasions for what they considered to be inappropriate behaviour on my part." This redress of grievance was submitted to Captain (Navy) Judith Harper as the Commandant of the CF Support Unit (Ottawa) and Captain Poulin's commanding officer, pursuant to CF Organization Orders.

Upon receipt of the application for redress of grievance, Captain (Navy) Harper responded in a memorandum to Captain Poulin:

> In your application you have referred to two incidents between yourself and L.-Cdr LaViolette (sic) wherein you have described her to have criticised and belittled you. As such actions *would constitute, if founded*, behaviour contrary to that required IAW CFAO 19-39, this part of your grievance will be severed and addressed as a harassment complaint. (emphasis added)

Upon review of the information provided by Captain (Navy) Frewer in relation to Captain Poulin's complaints of June 25 and October 28, 1998, Captain (Navy) Harper subsequently concluded that the incidents described did not support *prima facie* identification as harassment but rather reflected the proper use of authority by leaders and supervisors. In her memorandum to Captain Poulin dated October 5, 1999 she writes:

> Additionally, the wording of your memos was too unspecific to have had them considered to be *bona fide* harassment complaints and you did not make reference to CFAO 19-39 at all. It is considered that an officer, whose occupation relies principally on communication, should be able to put forth a clear and coherent complaint pursuant to the policy, that is recognizable as such a complaint, if that is his intention. Your memos did not do that.
>
> However, I am assured that the issues you refer to were investigated during informal interviews, personally, by Col Coleman, who determined that these matters had been related to normal differences of opinion within the staff or to administrative matters and have been addressed some time ago.

Captain Poulin subsequently requested his application for redress of grievance be submitted to the next level of adjudication, the Chief of the Defence Staff, and it is currently being held in abeyance at the CF Grievance Board at Captain Poulin's request pending the outcome of this investigation. When this Office agreed to investigate the allegations brought forward by Captain Poulin and referred to it by the Chief of Review Services, it was agreed by both the Chief of Review Services on behalf of the CF chain of command and Captain Poulin that all internal CF and DND investigations and inquiries related to Captain Poulin's complaint would be put on hold until this Office had completed its investigation.

Assessment

In his memorandum dated June 25 1998, Captain Poulin states, "I will interpret any further interaction with Lieutenant-Commander LaViolette related to my July 9, 1996 memorandum, addressed to Major-General Leach, as harassment of me by her." This wording in and of itself tends to suggest that no formal complaint of harassment was being made at the time, but that any further conduct or inaction would be viewed as such and consequently would be the subject of an actual harassment complaint in the future.

I am satisfied that Captain Poulin's memorandum of June 25, 1998 would not reasonably be viewed as a formal complaint of harassment that required investigation pursuant to CF policy. His complaints, in fact, appear to be framed as complaints about the exercise of Lieutenant-Commander LaViolette's supervisory authority and were treated as such.

The October 28, 1998 memorandum appears to indicate that Captain Poulin felt his current work environment within the Media Liaison Office constituted a hostile and unhealthy work environment. This memorandum is framed, however, as a request that Captain Poulin be transferred out of the Media Liaison Office — a resolution that was agreed to by his supervisors and which appears to have been implemented immediately.

I am satisfied that a reasonable person, having read Captain Poulin's October 28, 1998 memorandum, would not conclude that he wished the memorandum to be treated as a formal complaint of harassment and to be investigated as such. I am also satisfied that Mr. Coleman, as the supervisor responsible for both Captain Poulin and Lieutenant-Commander LaViolette (Captain Poulin's immediate supervisor), did not fail to take appropriate action in response to Captain Poulin's complaints.

Allegation 2

Access to Captain Poulin's personnel file

Captain Poulin complains that:

> On or around June 25, 1998, Col. Coleman asked the Administration Officer for DGPA, Capt. J. Kalhous, to request my military personnel file (CF 728(03-90) form confirms request). He received the subject document on or around June 29, 1998.
>
> This request stood out for several reasons. First, normally, my immediate supervisor (i.e. Lieutenant-Commander Laviolette) should have asked for my military personnel file. Second, this request did not coincide with any evaluation. Finally, this request stood out because, according to other official documents, the file was returned on or around June 30, 1998 — so Col. Coleman had my military personnel file for one working day (CF 728(03-90) form confirms date file was returned).
>
> Why did Col. Coleman request my file only a week after my memo dated July 9, 1996 was made public on or around June 17, 1998 and during the same period that there were numerous leaks about my

> medical status and military performance? How does his request for my military personnel file relate to the statements by the then Maj. Tremblay on or around July 2, 1998 and the then Capt. Stéphane Grenier on or around July 7, 1998?

Captain Poulin's personnel file was forwarded from CF Support Unit (Ottawa), Personnel Support Centre on June 25, 1998 to the attention of Captain John Kalhous, the Administration Officer for DGPA. This is confirmed by a Document Transit and Receipt form obtained from CF Support Unit (Ottawa).

Captain Poulin provided a copy of an e-mail communication he sent to Captain Kalhous on August 30, 1999. In his e-mail, Captain Poulin asks Captain Kalhous:

> On or around June 25, 1998 you asked for and later (June 29, 1998) received my military personnel file. Clearly, you would not have asked for the file for yourself. Rather you would have requested it for someone else — somebody in my chain of command (most likely candidates would have been either Col. Coleman, Cdr Frewer or L.-Cdr Laviolette).
>
> Given my situation at the time, this has become an important issue that I would like to have resolved. So, can you help me out by remembering who asked you to get my pers file?

Captain Kalhous responded to Captain Poulin's e-mail on August 31, 1999 as follows:

> I do remember getting your Pers File. I don't remember the exact dates but I do remember getting it for Maj. Mackie, which was probably a lot later than those dates you quoted. I vaguely remember, a long time ago, Col Coleman reviewing the file but I couldn't even give you a ball-park date.

Captain Kalhous was interviewed by Ombudsman's investigators on December 2, 1999. When asked if he had requested Captain Poulin's military personnel file at any time, Captain Kalhous recalled two occasions. The most recent occasion is addressed under the section of this report concerning Captain Poulin's allegations against Major George Mackie. On the earlier occasion, Captain Kalhous vaguely recalled giving Captain Poulin's file to Mr. Coleman but could not provide any timeframe.

When interviewed by Ombudsman's investigators, Mr. Coleman did not recall accessing Captain Poulin's personnel file. When asked if there would be any reason to pull the file, Mr. Coleman stated that the only times he had requested access to personnel files was while conducting merit boards for individuals applying to the branch, when such files are provided by career managers.

During Ombudsman's investigators' review of this allegation, it became apparent that Captain Poulin's concerns about access to his personnel file are directly related to his belief that, in the days following the June 1998 press conference at which his memorandum was made public, senior officials within DND leaked information concerning his involvement in a traffic accident to the media to discredit him. Captain Poulin maintains that he made these concerns known to Lieutenant-Commander Moore of the CFNIS. Captain Poulin's complaint regarding the leaking of his personal information to the media and his complaint that Commander Moore did not further investigate his allegations are addressed elsewhere in this report.

C. Allegation against Captain (Navy) Barry Frewer

Allegation

Failure to appropriately respond to complaints of harassment and to agree to transfer Captain Poulin out of the Media Liaison Office

Captain Poulin states in his written complaint:

> On or around June 2 and October 28, 1998, I reported incidents of harassment to my superiors to no avail. Cdr Frewer had a duty, under QR&O 4.02 (c) to act. It states: An Officer shall promote the welfare, efficiency and good discipline of all subordinates." (QR&O 4.02(c)).
>
> Normally, in cases of alleged harassment, the parties involved should be separated until the subject investigation is completed. Despite asking on August 25, September 28, and October 22, to be moved out of the MLO because of the unhealthy working environment, Cdr Frewer remained steadfast in

> rejecting my requests until October 28, 1998. Cdr Frewer's actions also violated CFAO 19.39, paragraph 9. It states: "No member of the CF shall subject any person in the workplace or in matters related to work to any form of harassment. Any member who subjects another person to harassment is liable to disciplinary and administrative action."

Captain Poulin further indicates in his written complaint that:

> Despite my numerous pleas to leave the MLO because of the unhealthy working environment and my June 25, 1998 harassment complaint against Lieutenant-Commander Laviolette, the then Cdr Frewer did not acquiesce to my request until November 2, 1998. His actions were in direct violation of CFAO 19.39 para. 10.
>
> It states: "It is the responsibility of all persons involved in the processing of a complaint to ensure that a complainant does not suffer any prejudice as a result of making a complaint. Retaliation against any individual for reporting harassment will not be permitted or tolerated. This prohibition extends to retaliation against those individuals who are not themselves complainants but who assist in the harassment investigation. A member who engages in such retaliation is liable to disciplinary and administrative action."

Captain (Navy) Frewer is currently the Director of Public Affairs Plans and Operations. As such, Captain (Navy) Frewer remains in Captain Poulin's direct chain of command and additionally serves as the Branch Advisor to uniformed public affairs personnel across the CF. During the time that Captain Poulin served in the Media Liaison Office, Captain (Navy) Frewer was the Deputy Director of Public Affairs Plans and Operations. Lieutenant-Commander LaViolette, who was the head of the Media Liaison Office, reported to him.

Captain (Navy) Frewer responded by telephone on March 20, 2001 that he had no comments in response to the interim report.

Captain (Navy) Frewer stated to Ombudsman's investigators that Captain Poulin had, on a number of occasions, indicated his wish to move out of the Media Liaison Office. Captain (Navy) Frewer recalled telling Captain Poulin that he hoped that Captain Poulin and Lieutenant-Commander LaViolette would be able to establish a working relationship.

Captain (Navy) Frewer stated he had spoken with either Mr. Coleman or Mr. Rioux, Director General Public Affairs and urged they consider moving Captain Poulin out of the Media Liaison Office because of the continued tension between him and Lieutenant-Commander LaViolette. Captain (Navy) Frewer related, however, that their discussion had included concerns that moving Captain Poulin out of his job would be perceived as penalizing him. Captain (Navy) Frewer also indicated that Mr. Coleman had met with both Captain Poulin and Lieutenant-Commander LaViolette in an effort to have them find some way of working together.

Captain (Navy) Frewer stated that, upon receipt of Captain Poulin's memorandum dated October 28, 1998, he felt that the situation had progressed to the point where Captain Poulin should be transferred out of the Media Liaison Office without delay. Captain (Navy) Frewer recalled that he met with Mr. Coleman and Mr. Rioux after receiving Captain Poulin's memorandum and Captain Poulin was moved within two days.

Captain (Navy) Frewer acknowledged the difficult situation that Captain Poulin would have been in as a member of the Media Liaison Office at the same time as he was a subject of active media interest in relation to the July 9, 1996 memorandum that he had authored.

Captain (Navy) Frewer stated to Ombudsman's investigators:

> … this was all part of the tension situation. The fact that he, in his own right, was a news maker by being the author of that [Labbé] document and still expected to do his job as a Media Liaison Officer on many other issues. So each time that he would talk on another issue, there was the instinct … to say "how's it going. What's happening on this other thing?" … by the same token his boss, LaViolette, she was knowingly suspicious at the time seeing all these calls that he was responding to in, at times, legitimate course of his duties. And she would come out and question "who are you speaking to?" … a fair comment. However, I can also see from [Poulin's] perspective, saying I'm doing my job. Please back off.

Captain (Navy) Frewer indicated that the decision not to move Captain Poulin out of the Media Liaison Office immediately after his July 9, 1996 memorandum was made public was influenced predominately by concerns that DND would appear to be penalizing Captain Poulin if they transferred him out of his job. It was also hoped that the ongoing conflict between Captain Poulin and his supervisor Lieutenant-Commander LaViolette could be resolved. Captain (Navy) Frewer acknowledged that in hindsight this decision may have not been the best course:

> ... having recognised now and looking back [on] how potentially explosive a working relationship which had that undercurrent of distress and suspicion ... I probably should have taken action with my superiors earlier to move him out of there. I guess as we were all wrapped up with so many other issues that were going on and talking to Poulin and talking to LaViolette that ... each time there was a discussion on this, we seemed to talk ourselves through it. But it was still lying there and it is ... with that element of hindsight ... I suspect I would have been a lot harder in recommending that we move him out of there earlier on. But ... in all the investigations going on, we did want to just keep the status quo until the outcome of the investigations and then ... make a decision.

Mr. Coleman also told Ombudsman's investigators that there was discussion concerning whether Captain Poulin should be moved out of the Media Liaison Office. He stated:

> ... I remember discussing, should we take him out of the Media Liaison Office and we specifically decided no ... because it might look like somehow we were doing ... something unusual to somebody ... As long as we kept him off that story, I said I couldn't think of any reason to move him out of the Media Liaison Office.

Assessment

As I have previously indicated, I am not satisfied that Captain Poulin's June 25, 1998 and October 28, 1998 memoranda were framed in such a fashion that they imposed a requirement on the chain of command to treat them as formal harassment complaints. These complaints did, however, raise significant issues and concerns about the ongoing tensions within the Media Liaison Office and the ongoing conflict between Captain Poulin and Lieutenant-Commander LaViolette, his supervisor. I am satisfied that the members of the chain of command within DGPA, including Mr. Coleman and Captain (Navy) Frewer, attempted to deal with these concerns in good faith. Ultimately, Captain Poulin was transferred out of the Media Liaison Office in October 1998, at his request, since the increasing tensions and ongoing conflict had escalated to the point where he could no longer cope in his existing work environment. It is unfortunate that the situation progressed to this point and it is recognized that Captain Poulin and his family must have suffered from considerable stress and anxiety during this time.

Captain (Navy) Frewer has acknowledged that, in hindsight, the chain of command ought to have taken the decision earlier to move Captain Poulin out of the Media Liaison Office. I am not satisfied, however, that Captain (Navy) Frewer or any other members of the chain of command within DGPA delayed moving Captain Poulin out of the Media Liaison Office in bad faith or in an effort to subject him to harassment or reprisals. I am also not satisfied that the chain of command failed to take reasonable steps to attempt to resolve Captain Poulin's complaints in relation to the conflict within the Media Liaison Office. In fact, the decision not to move Captain Poulin was initially taken in hopes that the situation within the Media Liaison Office would be resolved to his benefit and to avoid the appearance that he was being penalized for his role as the author of the July 9, 1996 memorandum.

D. Allegation against Captain Jean Morissette

Allegation

Monitoring Captain Poulin's activities and reporting to Captain Poulin's supervisor without his knowledge

In his written complaint to this Office, Captain Poulin states:

> Capt. Morissette behaved in a scandalous manner when he made several clandestine reports, without my knowledge, on my daily activities to Lieutenant-Commander D. Laviolette over the phone from his personal residence at night, even if these phone calls may have been initiated by Lieutenant-Commander Laviolette.
>
> Capt. Morissette behaved in a scandalous manner when (he) submitted clandestine e-mails, once again without my knowledge, on my daily activities to Lieutenant-Commander Laviolette.

> Capt. Morissette's actions, in both cases, also violated QR&O 4.02 (c). It states: "An Officer shall promote the welfare, efficiency and good discipline of all subordinates."

Captain Morissette worked within the Media Liaison Office at NDHQ during the time that Captain Poulin was assigned to that office. He functioned as second-in-command to Lieutenant-Commander LaViolette, Captain Poulin's immediate supervisor within the office.

Captain Morissette responded by telephone on March 27, 2001 that he had no comments in response to the interim report.

Ombudsman's investigators asked Captain Morissette if Lieutenant-Commander LaViolette called him at home to talk about Captain Poulin. Captain Morissette responded that was the case but that he consistently tried not to take sides in the ongoing conflict between Captain Poulin and Lieutenant-Commander LaViolette. Captain Morissette stated:

> [Lieutenant-Commander Laviolette] called me a few times. I can remember once I told Bruce that yes she had called me ... I couldn't say specifically what ... generally, most of the calls when ... the few times she called to talk about Bruce, it was to let off steam, nothing more, nothing less. She'd had it up to here and she was fed up with being stressed out with that whole story.

Ombudsman's investigators also asked Captain Morissette if he had ever reported Captain Poulin's activities in writing. Captain Morissette responded:

> Once, Denise [LaViolette] had asked me to write something ... When she asked me again to write something else afterwards I said no. I refused because after having done it the first time, I said no I don't want to get into that ... I did it once and I was sorry I had done it. I don't want to be perceived as ... taking sides for one or the other. (translation of the original French manuscript)

Captain Morissette provided Ombudsman's investigators with a copy of the report he wrote to Lieutenant-Commander LaViolette dated October 27, 1998. It reads:

> Events surrounding the release of the CFNIS investigation in regards to the conduct of Colonel S.

> Labbé and the treatment of the memo written by Captain Poulin.
>
> Prior to the release of the investigation (at 11:43 a.m.), at noon Monday the 26th of October, 1998, L.-Cdr Laviolette clearly indicated to all personnel of the MLO that it would be appropriate, because of the circumstances, that Captain Poulin not respond directly to the calls made by the media. By this temporary measure, it was understood by her clear explanations, that she wanted to ensure that the PAO present (Capt. Morissette, Lt(N) MacKillop and Coppard) would be the ones answering the calls on the lines 2353 and 2354, and that they would communicate all messages destined to Capt. Poulin if this was the case. This would enable him to prepare or to have the opportunity to decline all requests that he was not interested in answering.
>
> Only one request followed this chain, the one made by Sean Poulter. The other calls were made directly to Capt. Poulin's personal line.

Captain Morissette related that on a subsequent occasion Lieutenant-Commander LaViolette asked him to provide her with another written record relating to Captain Poulin, but he refused. No further electronic or written correspondence concerning Captain Poulin between Captain Morissette and Lieutenant-Commander LaViolette was located by Ombudsman's investigators.

Assessment

Captain Morissette conveyed regret at having documented, at Lieutenant-Commander LaViolette's request, that Captain Poulin may have received calls from members of the media directly on his assigned phone contrary to Lieutenant-Commander LaViolette's direction. It is evident that Captain Morissette did not wish to take sides in the ongoing and escalating conflict between Lieutenant-Commander LaViolette and Captain Poulin.

As I have previously indicated, I am satisfied that Lieutenant-Commander LaViolette's monitoring of Captain Poulin's activities within the Media Liaison Office was not an abuse of her authority. The ongoing workplace conflict in the Media Liaison Office clearly presented challenges to all staff members. Captain Morissette was in the doubly difficult position of second-in-command, hence was directly in the middle of the conflict between Lieutenant-

Commander LaViolette and Captain Poulin. I am satisfied, however, that Captain Morissette did not act inappropriately or abuse his position by reporting Captain Poulin's activities within the Media Liaison Office to Lieutenant-Commander LaViolette as she requested. As the second-in-command within the Media Liaison Office, it is not unreasonable that Captain Morissette would be requested by Lieutenant-Commander LaViolette to monitor and report on Captain Poulin's activities in light of her concerns that Captain Poulin may not have been conforming to policies that required reporting of media contacts.

I am also satisfied that Captain Morissette's actions were not conducted in a scandalous or clandestine manner. Indeed, Captain Morissette was forthcoming with Captain Poulin and had confided to him that he was growing frustrated at receiving Lieutenant-Commander LaViolette's calls at home and did not wish to be drawn into the ongoing conflict.

E. Allegation against Captain (Retired) Andrew Pope

Allegation

Harassment in the workplace

Captain Poulin states in his written complaint:

> On no less than five occasions, Capt. Pope dropped off *National Lampoon* calendar quotes that were, given my situation at the time, inappropriate thereby contributing to an unhealthy working environment. Capt. Pope's actions may be defined as harassment in accordance with CFAO 19.39 para. 3.
>
> It states: "... means conduct exhibited once or repeatedly, that offends, demeans, belittles or humiliates another person and that the person exhibiting the conduct knew or ought reasonably to have known would be unwelcome." (CFAO 19.39, paragraph 3).

Mr. Pope is a former public affairs officer who worked in Public Affairs at NDHQ at the same time as Captain Poulin. Captain Poulin's complaint of harassment in relation to Mr. Pope is based on the fact that, on a number of occasions, then Captain Pope displayed pages from a *National Lampoon* calendar in Captain Poulin's work area.

Mr. Pope responded by telephone on March 20, 2001 that he did not have any comments in response to the interim report.

In all, Captain Pope displayed five pages of a day-per-page calendar in Captain Poulin's work area, each containing a cynical brand of humorous commentary plus some infamous historical references.

For example, one caption from January 9 and 10, 1999 warns:

> Turn around. That guy in dark glasses? He's following you. Oh, and your phone's tapped, your bedroom's bugged and there's a tiny camera watching your every move in the bathroom. You're not paranoid. They really are out to get you.

Another for February 24 recommends:

> Accept criticism in the spirit is given — mean and nasty. What do they know anyway? You're smarter than they are; better looking too. They're just jealous. You're right, they're wrong. Screw 'em.

Ombudsman's investigators interviewed Mr. Pope in the boardroom of his current place of employment on April 11, 2000. Mr. Pope related his perception of events as follows:

> I didn't view it as harassment or, of course, I wouldn't do it. Bruce (Poulin) is my friend. Having gone though ... similar situations in a toxic work environment ... I found that humour was the best thing to do ... People had sent me similar such cartoons, it lifted my spirits and allowed me to get a better perspective from things ... (the calendar page read) "it's not paranoia when they are out to get ya" ... so it fit quite perfectly for the situation I had been through (and I figured Bruce would) find it quite amusing. He laughed at it. Seemed quite happy with it. No comment adverse to that ... He was someone who I felt would appreciate it, so I gave it to him in the course of doing other such office humour type things from throwing paper balls over the cubicle (at each other) and such.

Mr. Pope stated that Captain Poulin "seemed to appreciate the humour at the time ... and didn't say anything to say that there was a problem with it." Mr. Pope believed that the cynical messages contained in the calendar pages reflected aspects of Captain Poulin's situation and that he would find them humorous.

Captain Poulin's hand-written diary records three entries involving Mr. Pope:

> January 11, 1999
>
> Started receiving little note put on my desk to read. I found out who it was and he said it was just a joke.
> Pope
>
> February 15, 1999
>
> Andrew Pope asked me to help him draft a memo requesting his release from the CF. He found a job with CIDA (1 March 99). He said that I should look on the website
>
> February 25, 1999
>
> Went to Andrew Pope's farewell luncheon today.

There is nothing in Captain Poulin's written diary entries to indicate he was offended by Mr. Pope's actions at the time or that he considered the actions to be "demeaning, belittling or humiliating." In his written complaint, Captain Poulin stated that he:

> ... tried to play the whole incident down in an attempt to try and make a fresh start. After all, I had just changed jobs on or around November 2, 1998 and I did not need to alienate any more of my colleagues at work.

Captain Poulin did not complain to anyone about Mr. Pope's actions prior to submitting his complaint to this Office.

Assessment

I am satisfied that Mr. Pope's conduct did not constitute harassment towards Captain Poulin. Apart from Captain Poulin's written complaint to my Office, there were no other indications that he perceived Mr. Pope's calendar pages as "demeaning, belittling or humiliating" at the time. I am also not satisfied that

Mr. Pope knew or ought reasonably to have known that the conduct was unwelcome.

The calendar pages themselves do not appear to be objectively demeaning, belittling or humiliating such that one ought reasonably to know that they would be found offensive. I am satisfied that Mr. Pope believed that Captain Poulin would find them humorous. Captain Poulin gave no outward indication that he found this material objectionable. It is my view that Mr. Pope intended the calendar pages to be perceived as a gesture of alliance and friendship. It is unfortunate that Captain Poulin did not voice his objection to Mr. Pope at the time; given Mr. Pope's demeanor and friendly disposition towards Captain Poulin, it is likely that the matter could have been resolved amicably.

F. Allegation against Ms. Maureen Bruyere

Allegation

Failure to perform required duties as the Harassment Complaint Advisor

Captain Poulin states in his written complaint:

> At no time between June 17, 1998 and August 16, 1999, did Maureen Bruyere provide me with any support although she did for Lieutenant-Commander Laviolette (the alleged aggressor).
>
> At no time did Maureen Bruyere register any of my complaints in accordance with CFAO 19.39 (para. 31), for the annual harassment statistical report. In part because she says that Col. Coleman did not forward any of my complaints (June 25, and October 28, 1998) to her.
>
> At the same time, however, on or around August 16, 1999, she also admitted that she "... was aware that (I) had raised some concerns to the chain of command and that the chain of command was looking into them." She was also an info addressee on the memo written by DGPA on or around January 12, 1999 (1000-1(pers)).

> Maureen Bruyere's actions were also in direct violation of QR&O Vol. 1, Chapter 4.02 (e). It obliged her to "... report to the proper authority any infringement of the pertinent statutes, regulations, rules, orders and instructions governing the conduct of any person subject to the code of service discipline when the officer cannot deal adequately with the matter."

Ms. Bruyere is a senior public affairs advisor within DGPA and also functions as the Harassment Complaint Advisor for employees and members within Public Affairs. Captain Poulin complains that Ms. Bruyere did not properly fulfil her role as the Harassment Complaint Advisor in regard to his complaints of harassment.

Ms. Bruyere responded by telephone on March 20, 2001 indicating that she had no comments regarding the relevant portion of the interim report.

Ombudsman's investigators interviewed Ms. Bruyere in the Ombudsman's Office located at 185 Sparks Street in Ottawa on January 12, 2000. Ms. Bruyere confirmed Captain Poulin's assertion that she had discussions with Lieutenant-Commander LaViolette about the ongoing conflict between her and Captain Poulin. She stated that she had been involved in attempts to canvas the option of mediation or some other form of conflict resolution as a potential means to resolve the situation between Captain Poulin and Lieutenant-Commander LaViolette. However, discussions about potential mediation or conflict resolution were overtaken by the formal investigation into Captain Poulin's complaints of reprisals.

On August 16, 1999, Ms. Bruyere received an e-mail from Captain Poulin that stated:

> Assuming that you were/are the unit member responsible for preparing the annual harassment monitoring report since at least June 17, 1998. Did Col. (ret'd) R. Coleman ever forward any of my formal harassment complaints to you post-June 17 1998.

Ms. Bruyere responded the same day, stating in part:

> ... I am still the Branch Harassment Advisor. Not only do I prepare the annual statistical report, I am a resource person for all members of DGPA on harassment and workplace conflict issues from explaining departmental policies and procedures, assisting with resolving workplace conflict, assisting individuals in filing format complaints if required, and

> liaising with the DGPA (Training and Professional Development) on anti-harassment training requirements. I report directly to the DG and advise him on issues/situations that required his attention.
>
> To date I have received no written correspondence from Col Coleman (ret'd) concerning any formal harassment complaints filed by you since 17 Jun 98. I was aware that you had raised some concerns to the chain of command and that the chain of command was looking into them. I do have a copy of DGPA memo 1000-1 (Pers) dated 12 Jan 99 signed by DGPA (Mr. Rioux) as I was an info addressee on this correspondence.

Mr. Rioux's letter of January 12, 1999, addressed to both Lieutenant-Commander LaViolette and Captain Poulin, acknowledged that they had both *threatened* to charge one another with harassment. In his letter, Mr. Rioux stated that the Chief of Review Services had retained an outside agent to investigate Captain Poulin's allegations of reprisal and he directed that Captain Poulin and Lieutenant-Commander LaViolette refrain from further discussion of this matter.

Assessment

I am satisfied that Ms. Bruyere did not fail to fulfil her responsibilities as the Harassment Complaint Advisor *vis-à-vis* Captain Poulin nor did she demonstrate bias by providing advice to Lieutenant-Commander LaViolette. It should be noted that at no time did Captain Poulin approach Ms. Bruyere for assistance, although he appeared to be aware of her role as the Harassment Complaint Advisor. Ms. Bruyere also made clear in her memorandum to Captain Poulin that she was available to provide all DGPA members with assistance in dealing with issues of harassment. It was open to Captain Poulin to approach her for advice or assistance on harassment-related matters or to request that she refer him to another harassment advisor if he felt uncomfortable discussing his concerns with her in light of the fact that he was aware Lieutenant-Commander LaViolette had already approached her.

There is no indication that Ms. Bruyere received any formal, written harassment complaints made by Captain Poulin. Ms. Bruyere acknowledged in her e-mail to Captain Poulin that she was aware that Captain Poulin had raised some concerns and that the chain of command was looking into them. I am not satisfied, however, that she was under any obligation to follow up with Captain Poulin to inquire whether he wished to pursue these concerns as formal complaints. It should be noted that it is clear from the memorandum that Captain Poulin forwarded to Ms. Bruyere, and from his other dealings with DND and CF officials, that Captain Poulin was fully aware of DND and CF policies and procedures and how to go about formally pursuing his concerns as a harassment complaint if he wished to do so.

Conclusion

In my assessment, it is apparent that the allegations concerning the conduct of members working in Public Affairs are attributable to the increased tension of the situation in which Captain Poulin found himself after having been identified as the author of the July 9, 1996 memorandum, and that this tension led him to perceive what would otherwise be considered normal supervisory actions as acts of retaliation and reprisal. My findings in relation to many of the allegations Captain Poulin brought forward should not be read as a condemnation of him or as an indication that his perceptions at the time were not genuine or were "vexatious." It is understandable, given the considerable pressure he was under at the time, that he felt alienated and isolated in many respects. Although the working conditions Captain Poulin experienced at the time were not optimal, I am satisfied that the individuals listed in his complaint to my Office were not engaged in a campaign of retaliatory actions and reprisals against him.

PART FOUR: Other allegations of retaliation and reprisal

A. Allegation against Lieutenant-Commander Ed King

Allegation

Misleading Media Response Line concerning CFNIS investigation into circumstances surrounding July 9, 1996 memorandum

In his written complaint submitted to this Office, Captain Poulin states:

> On or around June 23, 1998, I accidentally came across a Media Response Line that was not numbered but kept in the official MLO reference binders. The MRL in question related to my memo dated July 9, 1996 and released to the public on June 17, 1998.
>
> The MRL contained several inaccuracies so I went and spoke with the originator of the MRL, then Lt(N) Ed King (Public Affairs, Vice Chief of the Defence Staff account). It also had no MRL number contrary to the Media Liaison Standard Operating Procedures, point 13 USING MRLs the MLO : "Use only an MRL with a file number provided by the DGPA Admin coord" (version June 22, 1998). Nevertheless, Lt(N) King said he would not change it nor would he complete the sign-off sheet.
>
> The misinformation contained in the subject MRL should have been corrected in accordance with Public Affairs Defence Administrative Orders and Directives dated March 1, 1998. It states: "In consultation with DGPA or Command Public Affairs, COs and DND managers shall promptly undertake appropriate PA activities to correct factual errors, misquotes and misleading information attributed to the DND or the CF." Addenda to MRLs are relatively easy to produce.
>
> Lt(N) E. King's conduct was all-the-more surprising given that a former public affairs officer, Cdr. Doug Caie, had recently been court martialed for similar activities: "wilfully making a false statement in a document, negligent performance of duty and neglect

> to the prejudice of good order and discipline." (The Calgary Herald, December 13, 1996, p. A14.)

Lieutenant-Commander King is a public affairs officer within Public Affairs at National Defence Headquarters (NDHQ). He was posted to the Public Affairs account for the Vice Chief of the Defence Staff. As such, Lieutenant-Commander King would attend to public affairs issues involving the Canadian Forces Provost Marshal (CFPM), whose reporting relationship is to the Vice Chief of the Defence Staff.

Lieutenant-Commander King responded via e-mail from his overseas posting on March 28, 2001, thanking this Office for the opportunity to review the relevant portion of the interim report and indicating that he had no comments in response.

Captain Poulin was employed as a Media Liaison Officer at the time of the events surrounding this allegation. In this capacity he would use Media Response Lines to respond to media queries. Staff members in the Media Liaison Office are the initial point of contact for the media.

Ombudsman's investigators obtained a copy of the Media Response Line drafted by Lieutenant-Commander King that Captain Poulin maintains is inaccurate. It states the following:

> The National Investigation Service (NIS) was tasked this morning to investigate allegations of sexual misconduct raised at Lt-Gen. Leach's news conference this morning (17 June). These allegations were supposedly made in an internal memorandum dated July 98 and were allegedly submitted to then MGen Leach as the Deputy Commander, Land Force Command. Consequently, the NIS will also, as part of their investigation, look into the actions taken by the chain of command as a result of this memorandum.

Captain Poulin's hand-written diary entry records his objections to the version of events recorded in the Media Response Line prepared by Lieutenant-Commander King as follows:

> … the MRL concerning this whole issue is incorrect (i.e., the time the investigation was initiated and the allegations were not "supposedly" made in an internal memorandum dated July 96. The allegations were made in an internal memorandum dated July 96. Spoke with Ed King (the originator) and he agreed that there were errors but that this MRL was now overtaken by events and need not be corrected … MRL on Poulin memo (sic)

In an interview with Ombudsman's investigators on January 24, 2000, Lieutenant-Commander King indicated he did not recall Captain Poulin speaking to him about this issue, but stated:

> Really this issue would go between myself and the account manager and up the chain of command. Captain Poulin or his impressions of it ... unless he was a subject matter expert and I need to talk to him. I [had] no reason to talk to him about it. (sic)

Assessment

It is understandable that Captain Poulin would be sensitive to the Media Response Line, since he was directly involved in the matter. It is clear that he felt that such a media response had the potential to reflect on his credibility.

Captain Poulin maintains that the Media Response Line was incorrect in specifying that the Canadian Forces National Investigation Service (CFNIS) was tasked to investigate the circumstances surrounding the June 9, 1996 memorandum on the morning of June 17, 1998. The significance of the exact timing of the delivery of the matter to the CFNIS for investigation is unclear. Furthermore, it is difficult to establish the exact time at which the CFNIS officially took delivery of the case for investigation. A notebook entry by Commander Moore indicates that he was assigned as lead investigator and met with the CFPM and the Deputy Provost Marshal to be briefed at 1455 hours on June 17, 1998, at which time a copy of the June 9, 1996 memorandum was provided to him. Clearly, the CFPM and her deputy had been made aware of the situation and the requirement to investigate before that time. I am not satisfied that Captain Poulin's concern about the perceived discrepancy in times is warranted.

Captain Poulin also takes exception to the use of the word "supposedly" to qualify the statement that the allegations against Colonel Labbé were contained in a June 9, 1996 memorandum that was submitted to Lieutenant-General Leach. I am satisfied that Captain Poulin's complaint in relation to the use of this language is substantiated. Although Captain Poulin is not named in the Media Response Line, many media accounts of the memorandum and the ensuing CFNIS investigations named Captain Poulin as the author of the memorandum.

The author of the Media Response Line appears to have used the word "allegedly" in relation to the memorandum having been submitted to Lieutenant-General Leach to it make clear that whether Lieutenant-General Leach actually saw the memorandum or not was unresolved and was an allegation under investigation at that time.

The rationale for the use of the word "supposedly" is less clear. The Media Response Line states that the allegations of misconduct against Colonel Labbé were "supposedly made in an internal memorandum dated July 9, 1996." Given the fact that the allegations against Colonel Labbé were contained in writing and could be easily verified by reviewing the memorandum, the need for a qualifier such as "supposedly" does not appear to be warranted. It is understandable that Captain Poulin takes issue with this aspect of the Media Response Line as it appears on its face to draw into question the contents of Captain Poulin's memorandum and, by inference, his credibility.

It is unclear to what extent the Media Response Line, which Captain Poulin located in the Director General Public Affairs (DGPA) binder, was ever used in responding to queries from the media. I am also not satisfied that there is evidence that the line created any direct personal or professional prejudice towards Captain Poulin. I agree with Lieutenant-Commander King's assessment that the incidents described in the memorandum have been overtaken by events and that there is no purpose to be served in re-issuing or correcting this particular Media Response Line.

B. Allegation against Major George Mackie

Allegation

Improper removal from position after filing redress of grievance

In his written complaint, Captain Poulin states that:

> Maj. Mackie behaved in a scandalous manner when he had me removed from his staff after he had became aware that I had submitted a redress of grievance about the PER he had written about me on or around June 25, 1999.
>
> Specifically, on or around August 9, 1999, I returned to work after my three-week vacation to discover that I was being moved again. I would no longer work with Maj. Mackie. I would write the weekly speeches and

> be responsible for media film support requests and media visits overseas. August 9, 1999, represented the first day after Maj. Mackie had read my two grievances against my PER written by him and my return to work.
>
> At no time was I warned or even consulted about this move prior to my returning to work on or around August 9, 1999. In fact, when I returned from holidays, it was presented to me as a " fait accompli."
>
> Maj. Mackie's actions violated CFAO 19.39 paragraph 15 relating to abuse of authority. It states: "Generally, this will take the form of the improper use of power or authority inherent in the position held by one person to endanger another person's job, undermine the performance of that job, threaten the economic livelihood of that person, or in any way interfere with or influence the career of such a person."
>
> Maj. Mackie's actions also violated CFAO 19.39, para. 51 relating to retaliation. It states: "It is the responsibility of all persons involved in the processing of a complaint to ensure that a complainant does not suffer any prejudice as a result of making a complaint. Retaliation against any individual for reporting harassment will not be permitted or tolerated. This prohibition extends to retaliation against those individuals who are not themselves complainants but who assist in the harassment investigation. A member who engages in such retaliation is liable to disciplinary and administrative action."

Major Mackie responded to the relevant portion of the interim report on March 22, 2001, indicating that he had no comments in response.

Major Mackie was interviewed by Ombudsman's investigators on March 23, 2000 in the boardroom of the Ombudsman's Office located at 185 Sparks Street, Ottawa. Major Mackie stated that Captain Poulin had been assigned to the Y2K Public Affairs section since November 1998; in March 1999, however, Captain Poulin was tasked to perform speech-writing duties for daily media briefings regarding the North Atlantic Treaty Organization (NATO) campaign in Kosovo. According to Major Mackie, Mr. Coleman initially made the decision to assign Captain Poulin to the daily briefings. Major Mackie stated that, when NATO operations in Kosovo led to daily briefings, Mr. Coleman moved to this activity and brought Captain Poulin with him.

At the conclusion of the daily Kosovo briefings, Captain Poulin's hand-written diary entry dated June 15, 1999 records that Major Mackie informed him he would be working with Major Mackie again the following week.

When asked about the reason for the change by Ombudsman's investigators, Major Mackie stated unequivocally that he did not cause Captain Poulin to be removed from the Y2K Public Affairs section. Major Mackie reported that Mr. Coleman initially chose Captain Poulin to work on daily briefings during the NATO operations in Kosovo. Afterwards, Major Mackie stated, the senior management in DGPA decided that media briefings would continue on a regular basis and Captain Poulin was assigned to that task.

Major Mackie stated that, from his perspective, Captain Poulin's assignment elsewhere was a loss because he already had too few resources. He indicated that the decision to continue operations briefings and to continue Captain Poulin's assignment to this activity was made by senior management within DGPA and was not his decision.

Captain (Navy) Frewer, when questioned by Ombudsman's investigators, stated that Major Mackie was not involved in the decision to move Captain Poulin from the Y2K Public Affairs section. Captain (Navy) Frewer stated that he had made the decision to move Captain Poulin from the Y2K Public Affairs section. He was also aware Captain Poulin had submitted an application for redress of grievance concerning the Performance Evaluation Report prepared by Major Mackie. Captain (Navy) Frewer also confirmed that Captain Poulin was only notified he would not return to the Y2K Public Affairs section after his return from holidays in August 1999.

Captain Poulin's diary entries concerning Major Mackie provide some insight into the working relationship between Major Mackie and Captain Poulin from Captain Poulin's perspective. In November 1998, Captain Poulin notes instances in which Major Mackie appears to demonstrate a concern for Captain Poulin's personal welfare and an understanding of the ongoing stress Captain Poulin suffered as a result of a lingering interest by some media personalities. By January 1999, Captain Poulin notes that Major Mackie considered Captain Poulin's involvement with the proposed administrative investigation and complaints against the Military Police to be interfering with his job. While I do not consider it necessary to include the specific entries, Captain Poulin is increasingly critical of Major Mackie's leadership in his diary.

Assessment

I am satisfied that Captain Poulin's move from Major Mackie's section was not an act of retaliation or reprisal for having filed a grievance in relation to his Performance Evaluation Report. Rather, it appears that Captain (Navy) Frewer, and not Major Mackie, made the decision that precluded Captain Poulin's return to the Y2K Public Affairs section in favour of retaining him to continue media briefings following the NATO campaign in Kosovo.

I am satisfied that Captain Poulin's belief that he was being treated in a retaliatory fashion was not made in bad faith. In my view, Captain Poulin's perception that Major Mackie had him moved as a consequence of the redress of grievance that he submitted is an example of how Captain Poulin's perceptions may have been influenced by his mistrust of the institution's leadership. As I have previously indicated, it appears this lack of trust had its genesis, at least in part, in the failure to respond to or acknowledge the allegations Captain Poulin brought forward to Lieutenant-General Leach in 1996.

C. Allegation against Lieutenant-Colonel Alexander F. Robertson

Allegation

Inappropriate comments made in letter about Captain Poulin

Captain Poulin states in his written complaint:

> On or around July 28, 1998, Lt.-Col. Robertson wrote and submitted a libellous and defamatory official military letter to another senior military officer about me. His actions were unbecoming of a senior officer. His actions are compounded by the fact that he did not write a letter of apology to me for his libellous and defamatory letter until I had sought legal counsel.

Lieutenant-Colonel Robertson responded to the interim report in writing on March 12, 2001. His comments were carefully reviewed and clarifications have been made to this final report where appropriate.

On May 12, 2000, Ombudsman's investigators interviewed Lieutenant-Colonel Robertson in his office located in the headquarters of the Stormont, Dundas and Glengary Highlanders, a militia unit in Cornwall where Lieutenant-Colonel Robertson was then the Commanding Officer. Lieutenant-Colonel Robertson was formerly the Acting Chief of Staff at the Canadian Land Forces Command and Staff College (CLFCSC) in Kingston during the time in 1996 when Colonel Labbé was Commandant of the college and Captain Poulin attended as a student.

Lieutenant-Colonel Robertson authored a letter to Colonel Labbé stating his support for Colonel Labbé in light of the allegations brought forward in Captain Poulin's memorandum and the ensuing investigation in 1998. Lieutenant-Colonel Robertson's letter dated July 28, 1998 was written on stationary of the Stormont, Dundas and Glengarry Highlanders and addressed to Colonel Labbé at his home. The letter contained highly critical and disparaging language describing Captain Poulin and his actions.

Captain Poulin obtained a copy of this letter in an edited format on March 31, 1999 as a result of a request made under the *Privacy Act*. Ombudsman's investigators obtained a copy of Lieutenant-Colonel Robertson's letter with the complete text from the CFNIS. Colonel Labbé had provided a copy of this letter of support to CFNIS investigators during its investigation into the allegations against him, along with an e-mail from another former member of the college staff in support of Colonel Labbé.

The correspondence from Lieutenant-Colonel Robertson suggested that Captain Poulin's allegations of misconduct against Colonel Labbé were motivated by his dissatisfaction with his final course results at the CLFCSC. Portions of Lieutenant-Colonel Robertson's letter to Colonel Labbé were published in the *Ottawa Citizen* newspaper and *Esprit de Corps* magazine.

Lieutenant-Colonel Robertson stated unequivocally to Ombudsman's investigators that he did not intend his letter to Colonel Labbé to be made public and that its becoming so has caused him personal embarrassment. Lieutenant-Colonel Robertson further stated that he had intended to express his opinion privately and, if he had foreseen that it would be made public, he would not have written the letter as he did. It is also his position that that the release of his correspondence by the Department of National Defence (DND) contravened department policy and his own right to privacy.

Lieutenant-Colonel Robertson stated that, when the contents of his letter became public, his Brigade Commander (33 Brigade) Colonel

Robert Chapman and Major-General Walter Holmes, the Commander of Land Forces, Central Area at that time, took administrative action against him for writing the letter on unit stationary.

On October 20, 2000, Ombudsman's investigators attended the CF Support Unit (Ottawa), 101 Colonel By Drive, Ottawa and reviewed Lieutenant-Colonel Robertson's military personnel file. They could not locate any record of administrative action relating to Lieutenant-Colonel's letter regarding Captain Poulin to Colonel Labbé.

On October 27, 2000, an Ombudsman's investigator contacted Colonel Chapman by telephone and solicited his recollection concerning any administrative action administered to Lieutenant-Colonel Robertson. Colonel Chapman did not recall what specific action was taken but said that Major-General Holmes had primarily dealt with it. My investigator asked Colonel Chapman if this administrative action was mentioned in Lieutenant-Colonel Robertson's Performance Evaluation Report. Colonel Chapman provided that, while he does prepare Lieutenant-Colonel Robertson's evaluation report, he did not recall if this information was included.

On October 27, 2000, Major-General Holmes provided an e-mail in response to the Ombudsman's investigator's query regarding his role, if any, concerning administrative action against Lieutenant-Colonel Robertson. Major-General Holmes wrote:

> … the following is my recollection of the incident with respect to Lt-Col. Robertson. I was provided with portions of the letter addressed to Col. Labbé from Lt-Col. Robertson with only those comments related to Captain Poulin included. I can't recall what mechanism was used but it was conveyed to me that Capt. Poulin would accept a letter of apology from Lt-Col. Robertson. Lt-Col. Robertson was directed to write a letter of apology through I believe his Brigade Commander … With respect to administrative action I can't recall if any was directed or executed.

Once Captain Poulin became aware of Lieutenant-Colonel Robertson's letter to Colonel Labbé, Captain Poulin sought legal representation at Crown expense. However, the CF denied Captain Poulin's application to have his legal fees paid for because it did not meet the criteria established by the federal government's Treasury Board requirements. Specifically, *Treasury Board of Canada Secretariat Policy on the Indemnification of and Legal Assistance for Crown Servants* (paragraph 4.c) specifies: "It is government policy not to provide legal assistance for claims or actions that Crown servants initiate." Lieutenant-Colonel Robertson's application for representation at Crown expense was also denied because it was deemed that Lieutenant-Colonel Robertson's letter to Colonel Labbé was not written in the course of "meeting departmental expectations."

Ultimately, Captain Poulin retained legal counsel at his own expense. Lieutenant-Colonel Robertson advised in his response to the interim report that, when portions of his letter to Colonel Labbé became public, after due consultation and of his own volition, he requested his legal counsel to send an apology to Captain Poulin's counsel.

Assessment

Lieutenant-Colonel Robertson's letter to Colonel Labbé about Captain Poulin contained a harsh personal criticism of Captain Poulin. While Lieutenant-Colonel Robertson's actions do not reflect favourably upon him, he maintains that his correspondence represented his private personal opinion intended solely for Colonel Labbé. This assertion is supported by the unofficial format of the correspondence and the fact that the letter was sent to Colonel Labbé's home address.

I do not dispute Lieutenant-Colonel Robertson's assertion that he did not intend his letter to Colonel Labbé to be disclosed to others. Accordingly, it is not reasonable to conclude Lieutenant-Colonel Robertson's actions were intended as reprisals against Captain Poulin. Nevertheless, the subsequent disclosure of the letter contributed significantly to Captain Poulin's perceptions of reprisals and retaliation. Given the disparity of rank between Lieutenant-Colonel Robertson and Captain Poulin and the fact that the letter was written on CF regimental letterhead, it is reasonable that when Captain Poulin became aware of the contents of the letter, he perceived he had suffered an injustice.

Compensation for amount spent on legal fees

Despite Lieutenant-Colonel Robertson's intention of disclosing his unfavourable opinion of Captain Poulin solely to Colonel Labbé, Captain Poulin suffered an injustice as a result of its disclosure. Once aware that he had been the subject of such unfavourable remarks in a letter between two senior officers, it was not unreasonable for Captain Poulin to expect some formal remedy.

Captain Poulin's decision to seek legal representation at public expense in order to determine what remedies he might have available to him was not unreasonable in the circumstances. The DND and the CF denied Captain Poulin's application for legal representation at Crown expense on the basis that his situation did not meet the federal government's Treasury Board requirements for indemnification of public servants.

In my view, even though Captain Poulin was not eligible for legal representation at public expense under Treasury Board guidelines, it is unfair that he incurred personal expense to be informed of his legal rights and to attempt to remedy any potential harm that might have been caused by the comments included in Lieutenant-Colonel Robertson's letter to Colonel Labbé.

I am satisfied that the CF should compensate Captain Poulin for actual legal expenses incurred as a result of this matter and that such compensation can be provided pursuant to the Treasury Board guidelines allowing for *ex gratia* payments.

Ombudsman's recommendation

I therefore recommend that:

10. The CF should issue an *ex gratia* payment to Captain Poulin for an amount equivalent to his costs incurred for legal representation in order to obtain advice and to attempt to resolve the issue surrounding the critical comments about him made by Lieutenant-Colonel Robertson in his letter to Colonel Labbé.

I am pleased to report that in his response to the interim report, the Chief of the Defence Staff advised that, "Your recommendation makes eminent sense" and undertook to invite Captain Poulin to bring forward any such request for payment.

Lieutenant-Colonel Robertson's personnel file

During the course of the investigation, my investigators could find no official record of administrative action taken against Lieutenant-Colonel Robertson for the letter he sent to Colonel Labbé on Lieutenant-Colonel Robertson's file. His former supervisors could only provide a vague account of what action was taken.

In my interim report, I stated that this situation should be remedied and that any administrative action taken should be properly documented on Lieutenant-Colonel Robertson's personnel file.

Ombudsman's recommendation

I therefore recommended that:

11. The Chief of the Defence Staff direct that a review be conducted to confirm the administrative action taken against Lieutenant-Colonel Robertson and that the necessary steps be taken to document such action.

The Chief of the Defence Staff, in his response to my interim report on March 16, 2001, replied that he accepted this recommendation and that he had directed the Chief of the Land Staff, Lieutenant-General Jeffries, to conduct such a review. On April 24, 2001, the Chief of the Defence Staff provided me with a copy of the Chief of the Land Staff's response dated April 23, 2001 in which he advised that administrative action had been taken but had not been documented properly on Lieutenant-Colonel Robertson's personnel file at the time. He assured me that Lieutenant-Colonel Robertson's file was being updated appropriately.

D. Allegations against Colonel Paul Maillet

Allegation 1

Unfair denial of opportunity to present speech at CF Defence Ethics Conference in October 1998

The written complaint submitted by Captain Poulin to this Office states:

> On or around October 13, 1998 after reading my draft speech that I intended to deliver at the Defence Conference on Ethics in October 1998, Col. Maillet directly intervened and prevented me from delivering the subject speech.
>
> Until this point, the speech had been solicited and authorised by his subordinate staff — the organisers of

> the conference (i.e. Capt. Heather MacQuarrie and Maj. Denis Beauchamps).

In his written complaint, Captain Poulin also indicates that Major-General Keith Penney, the Chief of Review Services, acted improperly by preventing him from speaking at the Defence Ethics Conference. With respect to Major-General Penney, Captain Poulin indicates:

> On or around October 13, 1998, after reading my draft speech that I intended to deliver at the Defence Conference on Ethics in October 1998, Maj.-Gen. Penney directly intervened and prevented me from delivering the subject speech. Until this point, the speech had been solicited and authorised by several of his subordinate staff — who were some of the organisers of the conference (i.e. Capt. Heather MacQuarrie and Maj. Denis Beauchamps).

Colonel Maillet responded to the relevant portion of the interim report on March 20, 2001, indicating that he had no comments in response.

Colonel Maillet is the Head of the CF Ethics Program and was the convenor of the Defence Ethics Conference held in October 1998. Ombudsman's investigators interviewed Colonel Maillet in his office at 101 Colonel By Drive. Colonel Maillet stated that Captain Poulin had responded to the invitation for papers to be considered for presentation at the Defence Ethics Conference. He believed that Captain Poulin had been asked to make a submission by Captain Heather MacQuarrie, one of Colonel Maillet's staff members responsible for organizing the conference.

In his written complaint submitted to this Office, Captain Poulin records his understanding of the terms under which he was invited to speak at the conference. Captain Poulin writes:

> On or around September 10, 1998, I received a phone call from Capt. Heather MacQuarrie stating she would be interested in having me take part on a panel at the Conference of Defence Ethics scheduled for October 20-21, 1998. She said before I could speak, however, I would have to meet the following criteria: (1) My speech would have to answer the question: "Is there enough reprisal protection? If not, how does it affect a plaintiff's willingness to come forward? (2) My speech must not name anybody, (3) The NIS investigation concerning my memo dated July 9, 1996 must be over, (4) The organiser of the Conference must approve the text before it may be presented, and (5)

> My boss had to agree with me giving a speech. I agreed with her conditions and I began working on my speech.

Colonel Maillet stated to Ombudsman's investigators that Captain MacQuarrie gave him a copy of Captain Poulin's speech. He commented that he felt the paper was not appropriate for the conference because it made specific allegations of harassment and reprisal. Colonel Maillet stated he discussed Captain Poulin's submission with Major-General Penny who agreed that Captain Poulin's speech was not appropriate for the conference forum.

Colonel Maillet stated two reasons for not including Captain Poulin as a presenter. First, Colonel Maillet related that the conference was not designed to discuss ongoing cases and it was felt that Captain Poulin's draft speech was inappropriate for a conference forum because a balanced argument or view would not be possible. Secondly, Colonel Maillet related that, in discussion with him, Major-General Penney had indicated he did not consider it appropriate to include Captain Poulin because of the ongoing CFNIS investigations into his allegations.

Ombudsman's investigators interviewed Captain Heather MacQuarrie as a witness to this allegation on December 14, 1999. Captain MacQuarrie was one of the officers responsible for organizing the 1998 Defence Ethics Conference. Captain MacQuarrie stated that Captain Poulin had responded to the CF General Message dated July 15, 1998 that advertised the conference and solicited interested members to apply for one of five positions on a panel of presenters. Captain MacQuarrie recalled that Captain Poulin called her in response to the message to say that he was definitely interested in the theme and he was also interested on the basis of his personal circumstances. Captain MacQuarrie was interested in including Captain Poulin in the conference line-up and stated she received Captain Poulin's speaking notes by fax on October 8, 1998. Captain MacQuarrie related that her:

> … first concern was about Captain Poulin and his own well-being and I urged him to speak with Colonel Maillet. He did. I passed, to Colonel Maillet the Director of Ethics, a copy of Captain Poulin's paper. I was enthusiastic about doing something but as the days went by and Colonel Maillet had the opportunity to meet with this individual and subsequently had the opportunity to raise the issue of these circumstances with General Penny, a determination was made that [Poulin's] script for the panel contravened the role

> [because] it made specific mention of a case which then was under investigation.
>
> We couldn't have any assurance that the investigation would be complete by the time of the conference [on] the 20th and 21st of October. What was conveyed back to me was the directive that I could not include Captain Bruce Poulin as a member of my panel as this case was under investigation.

From Captain Poulin's perspective, the CFNIS investigations should not have precluded his speaking at the conference. Captain Poulin states that he spoke with Commander Moore, the lead CFNIS investigator on the file on October 2, 1998 and confirmed that there would be no problem with him giving his speech at the conference. Commander Moore confirmed to Ombudsman's investigators that Captain Poulin had inquired whether speaking at the Defence Ethics Conference presented problems from the perspective of the CFNIS and confirmed that he related to Captain Poulin that it did not.

Copies of the two relevant investigation reports by the CFNIS indicate that they were completed in August 1998 and October 1998. Both reports were signed off by the CFPM, Brigadier-General Samson, on October 23, 1998.

Captain MacQuarrie stated that she understood Colonel Maillet had discussed Captain Poulin's speaking notes with Major-General Penney, the Chief of Review Services. Captain McQuarrie recalled it was after his discussion with Major-General Penney that Colonel Maillet had informed her that Captain Poulin could not speak at the conference.

Ombudsman's investigators interviewed Major Denis Beauchamp who, like Captain MacQuarrie, was an organizer of the Defence Ethics Conference. Major Beauchamps stated he had met with Captain Poulin because portions of Captain Poulin's speaking notes did not meet the criteria for presentation at the conference. Specifically, Major Beauchamps stated that portions of the speaking notes attributed allegations to specific individuals. However, Major Beauchamps indicated that, from his perspective, it was still possible for Captain Poulin to present his speech provided he made a few amendments. Captain Poulin agreed to make the amendments to items in the speech that Major Beauchamps had identified as inappropriate for the conference. Major Beauchamps could not provide any information regarding why Captain Poulin ultimately was not permitted to speak at the conference, beyond stating that the decision was made between Colonel Maillet and Major-General Penney.

Major-General Penney confirmed to Ombudsman's investigators that he personally made the decision that Captain Poulin would not be permitted to present his speech at the conference. Major-General Penney stated:

> When [Poulin's] paper arrived, I reviewed it with the Director of Ethics, Colonel Maillet ... In that speech ... were statements being made about how he was treated. In fact, I saw them as accusations. My concern was we were running an ethics conference where we wanted to have a dialogue about what ethical issues were. We weren't looking for someone to stand up at the podium and possibly accuse people in the audience of mistreating him ... I didn't believe that the Ethics Conference was a place to stand up and make accusations.

Major-General Penney stated further that he then spoke to the Chief of the Defence Staff about this issue and informed him of his decision not to let Captain Poulin deliver his speech. Major-General Penney related that the Chief of the Defence Staff agreed with his assessment and also agreed that, while it would be inappropriate for Captain Poulin to give his speech at the conference, his allegations of reprisals and harassment needed to be examined. Subsequently, the Director Special Examinations and Inquiries, a section within the Chief of Review Services, was tasked to commence an administrative investigation based on the allegations of reprisal and harassment that were contained in Captain Poulin's draft speech. This administrative investigation ultimately did not get off the ground and the matter was referred to this Office, as noted elsewhere in this report.

Colonel Maillet stated he advised Captain Poulin of the decision that his speech could not be presented at the conference and that Captain Poulin seemed to accept this explanation and agreed to withdraw his submission.

Captain Poulin acknowledges that he received a phone call from Colonel Maillet stating that, after careful review of his speech and after discussing it with Major-General Penney, the Chief of Review Services, he would forward the speech to the Director Special Examinations and Inquiries. It, in turn, would conduct its own investigation into the allegations and report the findings directly to General Baril, the Chief of the Defence Staff. Captain Poulin indicated, however, that he was not satisfied with how the matter was resolved and that in hindsight he perceived the "conversation about the need for an immediate administrative investigation without working out the details and without my participation appeared to be a poor attempt at precluding the Ombudsman and/or the media from looking at my case."

Assessment

I am satisfied that the decision to exclude Captain Poulin from presenting his speech at the Defence Ethics Conference was not made in bad faith and was not an inappropriate exercise of discretion by Major-General Penney. I am also satisfied that Colonel Maillet did not act inappropriately or abuse his authority or discretion in dealing with Captain Poulin's request to present his speech at the conference.

The main reason behind the decision not to allow Captain Poulin to speak at the Defence Ethics Conference appears to have been the view that it was inappropriate to raise specific allegations of reprisal and harassment in a conference setting, particularly since such allegations had not yet been investigated and the individuals subject to such allegations would not have an opportunity to respond or present their points of view. A further cause of concern was that the individuals Captain Poulin believed were responsible for the reprisal and harassment could be easily identified and they had not been made aware of the allegations. I am satisfied these concerns were not improper or arbitrary considerations to take into account in disallowing Captain Poulin from speaking at the conference.

I am also satisfied that the decision to disallow Captain Poulin from presenting his speech at the Defence Ethics Conference did not constitute an attempt to prevent his concerns from being fully investigated. This is evidenced by the fact that Major-General Penney took the step of meeting with the Chief of the Defence Staff and it was decided that Captain Poulin's allegations would be forwarded immediately for a full administrative review by the Chief of Review Services. Indeed, it appears that the decision not to allow Captain Poulin to present the allegations contained in his speech in the conference forum was also intended to ensure that any investigation or review of the allegations would not be tainted or prejudiced by an airing of the allegations in the defence community without giving an opportunity to the individuals involved to respond.

An additional reason for the decision to disallow Captain Poulin from speaking at the Defence Ethics Conference appears to have been because the results of the CFNIS investigations into the allegations against Colonel Labbé and Lieutenant-General Leach had not yet been approved by the CFPM. Although Captain Poulin confirmed with Commander Moore, as the lead CFNIS investigator, that he did not see a problem with Captain Poulin speaking at the conference from an investigator's point of view, it was still open for CF authorities to decide that Captain Poulin's speech should not be presented publicly until the official results of the investigations were approved and announced publicly. Captain Poulin's speech was directly related to the allegations against Colonel Labbé and Lieutenant-General Leach, both of which were subjects of the ongoing CFNIS investigations. I am satisfied that, out of a sense of fairness to all parties, it was prudent to prevent Captain Poulin's speech from being made in a conference forum until the final and official results of the CFNIS investigations were released.

Allegation 2

Misleading comments to the media surrounding reasons for Captain Poulin not being allowed to speak at CF Defence Ethics Conference in October 1998

Captain Poulin states that:

> On or around October 20, 1998, Col. Maillet also went before the national press and TV and misinformed them about the reasons I had been prevented from delivering my speech on the reprisals I had suffered since my memo dated July 9, 1996 was made public on June 17, 1998. He said that I could not deliver my speech to the Defence Ethics Conference because there was a criminal and administrative investigation going on and that some interviews had even taken place so I could not talk about my case.
>
> The misinformation Col. Maillet gave the media on or around October 20, 1998, at approximately 9:45hrs should have been corrected in accordance with Public Affairs Defence Administrative Orders and Directives dated March 1, 1998. It states: "In consultation with DGPA or Command Public Affairs, COs and DND managers shall promptly undertake appropriate PA activities to correct factual errors, misquotes and misleading information attributed to the DND or the CF."

Colonel Maillet stated to Ombudsman's investigators that he participated in the media scrum at the request of the Chief of the

Defence Staff. The media scrum occurred during the set-up for the Defence Ethics Conference. Colonel Maillet related that he had informed the media that the ongoing CFNIS investigations examining the conduct of Colonel Labbé and actions of Lieutenant-General Leach rendered it inappropriate that Captain Poulin speak at the Defence Ethics Conference. Ombudsman's investigators obtained a copy of the transcript of this media scrum. In it Colonel Maillet comments, "[we] had established some restrictions on people giving papers that they do not comment on cases that are still under investigation."

The Defence Ethics Conference took place on October 20 and 21, 1998. Ombudsman's investigators confirmed that the final results of the CFNIS investigations into the allegations against Colonel Labbé and Lieutenant-General Leach were not approved by the CFPM until October 23, 1998. The final results of these investigations were publicly announced by the CF in a press release dated October 26, 1998.

In his written complaint submitted to this Office, Captain Poulin states:

> On or around October 13, 1998, while in the MLO, I received a phone call from Col. Paul Maillet (Senior Principal Defence Ethics) phoned me to say that he had read my speech and felt that I had a case to launch another investigation into possible reprisals against me. He said he would prefer that the NIS criminal investigations be completed before I presented my speech. I responded stating the NIS had seen my speech and said that it did not interfere with their criminal investigations. Col. Maillet then said that my speech could make some people in the audience feel uneasy.
>
> I responded stating that, by not allowing me (a witness to a NIS investigation) to speak while allowing Lt.-Gen. Leach (a subject of a NIS investigation) would be perceived as a double standard. After all was said and done, I agreed to withdraw from the panel.
>
> Col. Maillet appreciated my gesture and stressed that his recommendation for me to withdraw from the speaking at the conference should not be interpreted as part of the series of reprisals against me thus far. He also suggested I send a copy of my speech to the Ombudsman. I complied with his request and forwarded a copy of my draft speech.

Ombudsman's investigators reviewed the agenda for the CF Defence Ethics Conference in October 1998. It does not appear that either Lieutenant-General Leach or Colonel Labbé were permitted to discuss the subject of the ongoing CFNIS investigations in an official capacity at the conference forum.

Captain Poulin's hand-written diary entry for October 19, 1998 confirms that the Chief of Review Services had begun to initiate the administrative investigation into the allegations of reprisal and harassment contained in his speech. This entry records that Captain Poulin met with Lieutenant-Colonel Deschênes of the Director Special Examinations and Inquiries for that purpose. At that time, however, Captain Poulin indicated in his diary entry that, "I will wait to see what the results are of my NIS investigation before I seek Maj. Deschênes' help and proceed with an administrative investigation into harassment."

Assessment

The message that appears to have been conveyed by Colonel Maillet's statement to the media is that Captain Poulin's paper could not be presented at the conference because there were investigations ongoing. I am satisfied that Colonel Maillet's statements, or the message they appear to convey, were not inaccurate or misleading.

Although there were a number of reasons why Captain Poulin was not allowed to present his paper at the conference, it was not inaccurate or incorrect to state he was not allowed to do so because of the ongoing investigations. As I have already noted, although Captain Poulin confirmed with then Lieutenant-Commander Moore as the lead CFNIS investigator that he did not see a problem with Captain Poulin's speaking at the conference, it remained the decision of the Chief of Review Services to decide that Captain Poulin's speech should not be presented publicly until the official results of the CFNIS investigations were approved and the results announced publicly.

Furthermore, at the time of the ethics conference and Colonel Maillet's statements to the media, a decision had already been made by CF authorities that Captain Poulin's allegations would be the subject of an administrative investigation and the Chief of Review Services had directed an investigation be initiated. Even though Captain Poulin decided he wanted to wait until seeing the results of the CFNIS investigations before proceeding with an administrative review, it must be considered that the Chief of

Review Services had a moral obligation to respond to the allegations contained in Captain Poulin's speaking notes. This does not change the rationale behind the decision not to allow Captain Poulin to speak at the conference, which was to prevent any ongoing investigation from being prejudiced or tainted by statements in the conference forum about the incidents subject to investigation.

E. Allegations against Major-General Keith Penney

Major-General Penney responded to the relevant portion of the interim report in writing on March 6, 2001 stating, "After reviewing the report I find the report to be factual and I have nothing to either add or to question."

Allegation 1

Unfair denial of opportunity to present speech at CF Defence Ethics Conference in October 1998

This allegation against Major-General Penney relates to the same matters referred to in the allegation regarding Colonel Paul Maillet and is dealt with in the previous section of this report.

Allegation 2

Selection of harassment investigator on contract with department and attempts to block attempts to resolve complaints

Captain Poulin states in his written complaint:

> On or around October 28, 1998, Maj.-Gen. Penney wrote a memo (7045-72(CRS) addressed to me stating that my complaints (contained in my draft speech for the Conference of Defence Ethics 20-21, 1998) were "... of such a nature that it obligates us to take action. We have therefore initiated an administrative investigation." Maj.-Gen. Penney also asserted that Mr. J. Maurice Cantin, QC had already been retained to: "... examine the allegations ..."

> Despite my oft-repeated written misgivings about having a contractor of (General Penney's) choosing, Mr. J. Maurice Cantin, an individual frequently relied upon by DND/CF to conduct such sensitive investigations, Maj.-Gen. Penney remained adamant that only Mr. Cantin was qualified and available to address my complaints.

Captain Poulin further states:

> On or around January 14, 1999, Maj.-Gen. Penney wrote and submitted a memo (7045-72 (CRS)) addressed to me stating he had: "… requested that Mr J. Maurice Cantin progress this investigation expeditiously …" knowing this, and those statements made previously to be false.
>
> Maj.-Gen. Penney played a lead role in blocking each and every one of my initiatives to bring closure to this whole affair. It is ironic that I throughout the period in question (October 1998 — July 1999) I had always acted on Maj.-Gen. Penney's own advice provided to me in a memorandum dated December 21, 1998 to no avail.

Major-General Penney is the Chief of Review Services for DND and the CF. The role of the Review Services section is outlined in its mission statement:

> … to perform review services on behalf of the Deputy Minister and the Chief of the Defence Staff (DM/CDS) to promote improvements in the Department of National Defence and the Canadian Forces' policies, programs, operations and activities and to enhance the abilities of members and employees to perform their duties to the highest ethical standards.

Major-General Penney became involved in dealing with Captain Poulin's complaints once Colonel Maillet, the Director of the Defence Ethics Program, brought Captain Poulin's allegations of reprisals and harassment to Major-General Penney's attention. As previously noted, Captain Poulin's allegations of reprisals and harassment were contained in a speech he had submitted to the organizers of the October 1998 Defence Ethics Conference. Major-General Penney ultimately decided this speech could not be presented at the conference. He did, however, meet with the Chief of the Defence Staff to discuss the situation and it was decided to order an administrative examination of Captain Poulin's allegations. Major-General Penney wrote Captain Poulin on October 28, 1998 to inform him that an administrative investigation into the allegations contained in his speaking notes would take place and that an experienced private consultant, Mr. Cantin, had been retained by the Chief of Review Services to head this investigation.

Captain Poulin responded on November 2, 1998 stating that, although he welcomed the administrative review, he felt that the consultant contracted by the Chief of Review Services might not constitute "an unbiased third party." Captain Poulin related that in his opinion Mr. Cantin's previous involvement with DND precluded him from arriving at an "objective conclusion regarding the alleged reprisals ..."

Major-General Penney responded to Captain Poulin's concerns on November 16, 1998, stating "[w]e appreciated and respect your desire that any review of these allegations be completely impartial; no one would be well served if it were otherwise." However, Major-General Penney urged Captain Poulin to provide his full cooperation to Mr. Cantin "... in order that a full appreciation of the facts surrounding the allegations [Captain Poulin] brought forward can be achieved."

In a memo to Major-General Penney on November 20, 1998, Captain Poulin reiterated his objections to the retention of Mr. Cantin and suggested the following basic requirements that he felt were necessary for an unbiased and thorough investigation:

> People from outside DND who do not have a track record of being selected by DND/CF and awarded contracts;
>
> People who have nothing to gain from any future employment from DND/CF;
>
> People who's livelihood is not dependent on the results of the investigation;
>
> People who understand the CF culture; and:
>
> People who understand the special hierarchical milieu of the CF.

Alternatively, Captain Poulin proposed:

> Another alternative would be to conduct the subject investigation through other non-DND/CF organisations. They would include but are not limited to:

The Ombudsman

the Public Service Commission (Appeals and Investigation Branch); and

An external review made up of, but not limited to; (Judge Rene Marin, Colonel (Retired) Jim Allan, Mr. Mathew Fisher (journalist), Brigadier-General Jim Hansen, Colonel (Retired) Michel Drapeau, and Mr. Peter Worthington (journalist).

Despite Captain Poulin's objections and his proposals for alternative investigators, Major-General Penney signed terms of reference dated December 7, 1998 mandating Mr. Cantin to investigate Captain Poulin's allegations and requiring him to submit a report to the Chief of Review Services by February 15, 1999.

In a memorandum dated December 8, 1998, Major-General Penney responded to Captain Poulin's continued objections to the "unilateral decision" to contract Mr. Cantin to investigate. In his correspondence, Major-General Penney noted that Mr. Cantin and Captain Poulin had met and Mr. Cantin had explained the process he would follow. Major-General Penney concluded:

> Hopefully, this gave you some basis to increase your level of confidence in the impartiality of the investigative work to be performed. Notwithstanding, Mr. Cantin is unfettered in his capacity to investigate this matter and we have absolutely no reason to doubt his professional objectivity. Accordingly, I would again encourage that you give [Mr. Cantin] your full co-operation in responding to his requirement to gather information regarding the reprisals which you have alleged.

In a memorandum dated December 10, 1998, Captain Poulin again expressed his concerns to Major-General Penney as follows:

> For reasons unknown to me, your memo indicates a certain fixation in having Mr. J. Maurice Cantin appointed to conduct the subject investigation even though I have clearly enunciated my fear that his propensity to conduct, under contract, similar investigations for DND/CF may predispose him towards the institution particularly when, in this instance, the allegations involve key principals of the said institution.

Captain Poulin also requested that he be provided with private legal representation at public expense so that "every allegation I wish to make is properly put forward."

On December 21, 1998, Major-General Penney replied to Captain Poulin as follows:

> In the specific instance of the allegation which you have raised, the Defence organization is obligated, in the circumstances, to cause an investigation. As you know, such an investigation was initiated when I became aware of your concerns, and we have engaged the services of an experienced and respected external investigator first contracted by my Branch in Fall 98. As indicated in prior correspondence, this individual has been requested to exercise his professional capabilities and objectivity to examine the allegations which you have made. It is my responsibility to make the determination as to whether investigators so engaged/deployed have the necessary qualifications and objectivity to perform the professional services requested. Nothing has come to my attention which would to cause me to alter or question my decision as regarding Mr. Cantin. (sic)

Major-General Penney also informed Captain Poulin:

> … there are options available to you should you choose to pursue them. These would include, but not be limited to, making a complaint to the DND/CF Ombudsman, Mr. A. Marin … seeking assistance from the office of Alternative Disputes Resolution, Mr. P. Sterne … and/or lodging a grievance. Regarding your interest in obtaining legal counsel, you can make application to the Director of Law/Claims pursuant to the Treasury Board policy on "Indemnification of and Legal Assistance for Pubic Servants."

In conclusion, Major-General Penney stated:

> I again assure you that my Branch is committed to ensuring that your allegations of reprisal are thoroughly investigated. We thank you for any cooperation which you may continue to extend to the investigators.

In a memorandum to Major-General Penney dated January 8, 1999, Captain Poulin replied that, despite:

> … my real apprehension of bias on both the part of the (DND/CF) and the arbitrarily chosen

> investigator/arbitrator, your memo indicates that your mind has been made up in this matter and no amount of concern on my part would lead you to revisit your decision.

Captain Poulin then related that he was prepared to participate in the investigation led by Mr. Cantin subject to two conditions:

> a. My outstanding request under the Privacy Act, submitted more than 60 days ago be satisfied.
>
> b. I be provided with legal counsel; a request in that sense will be drawn up shortly.

Captain Poulin concludes:

> Should you be unable to agree with these provisos, I will then withdraw my complaints and proceed instead with the DND/CF Ombudsman. Until such time as the above provisos are met, however, I ask that the investigation be suspended.

In a memorandum dated January 14, 1999, Major-General Penny wrote to Captain Poulin noting his "conditional willingness to participate in the investigation by Mr. Maurice Cantin." He advised Captain Poulin that he had requested that "Mr. Cantin progress this investigation expeditiously" and added that Captain Poulin was "free to access the services of the Department of National Defence/Canadian Forces Ombudsman at any time."

Following this chain of correspondence between Captain Poulin and Major-General Penney, Mr. Cantin attempted to begin his investigation pursuant to the terms of reference signed by Major-General Penney. It appears, however, that the investigation never got off the ground. In a letter to Major-General Penney dated March 8, 1999, Mr. Cantin stated that "so far my efforts to investigate this matter have been fruitless." Mr. Cantin informed Major-General Penney that Captain Poulin felt that he was unable to participate in the investigation until he received videotaped records of his earlier interviews with the CFNIS. Mr. Cantin advised Major-General Penney:

> I myself will be unable to proceed with the investigation unless Capt. Poulin accepts to be interviewed. I absolutely need from him detailed allegations with facts and names of individuals.

Further correspondence between Major-General Penney and Captain Poulin did not advance the proposed investigation.

Captain Poulin continued to link his participation in the Chief of Review Services investigation with being afforded legal representation at public expense, receiving copies of his earlier interviews with the CFNIS and the inclusion of individuals of his choosing to complement Mr. Cantin on the investigating team.

As a result of the fact that the investigation by Mr. Cantin did not appear to be progressing, Major-General Penney made the decision to approach the Ombudsman's Office and request its agreement for him to refer the matter to this Office for an investigation. This Office agreed to accept Major-General Penney's referral of Captain Poulin's complaint on the condition that Captain Poulin agreed to participate in the investigation. It was also agreed that this Office would accept the complaint without any terms of reference from DND and the CF and would investigate any aspects of Captain Poulin's complaint it felt were appropriate.

Consequently, Major-General Penney wrote to Captain Poulin and advised him:

> Realizing that it is unlikely that I will be able to progress this file and, believing that your claims of reprisal warrant a review, I took the initiative to meet with officials from the office of the DND Ombudsman on 12 July, 1999 to determine whether it would be appropriate and feasible for their office to take over the file and look into the matter. I understand that they have accepted the file and that they have been in contact with you.

In his response to Major-General Penney, Captain Poulin confirmed his agreement and his view that the Ombudsman's Office possessed the required independence to investigate his complaints:

> Your decision to refer the investigation to the Ombudsman ... is a welcomed positive step. It is a clear shift on DND/CF's part to a position more akin to what I have been proposing ever since you approached me last fall ... He has, I believe the required independence and objectivity to examine my allegations in an effective way.

Assessment

I am satisfied that Major-General Penney did not exercise his discretion improperly in retaining Mr. Cantin on behalf of the CF to investigate Captain Poulin's complaints or that he attempted to block or interfere with the resolution of Captain Poulin's complaints. As the Chief of Review Services, Major-General Penney was responsible for the selection of a qualified individual to investigate Captain Poulin's allegations in a thorough, competent and unbiased fashion. Based on the previous services Mr. Cantin had provided to DND, Major-General Penney concluded that he was capable of filling this role.

It is clear that Captain Poulin had reservations regarding the use of Mr. Cantin, an investigator with an existing contractual relationship with DND, to conduct the administrative investigation. His concerns are understandable in light of the history of events, including the failure to address the complaints raised in his July 9, 1996 memorandum and the ongoing conflicts he was experiencing in his workplace. I am satisfied that Major-General Penney was responsive to these concerns. Indeed, from the lengthy chain of correspondence between Major-General Penney and Captain Poulin, it is clear that Major-General Penney was committed to doing what he could to ease Captain Poulin's concerns while ensuring his allegations of reprisal and harassment were investigated. It should be noted that Captain Poulin was not the only individual who had an interest in having his allegations investigated thoroughly, independently and expeditiously: the subjects of his allegations also had that right. As the Chief of Review Services, Major-General Penney had an obligation to ensure that the interests of all involved in the allegations were respected.

Finally, when it became apparent that the issue of using Mr. Cantin to investigate Captain Poulin's complaints was not going to be resolved, Major-General Penney took the initiative to facilitate referral of this matter to my Office for investigation. Major-General Penney's decision to refer this matter to the Ombudsman's Office is further indicative of his commitment to ensuring that an independent and unbiased investigation of Captain Poulin's complaints was conducted.

Allegation 3

Improperly recommending redress of grievance as a means to resolve complaints in light of potential for conflict of interest by Director Canadian Forces Grievance Administration

In his written complaint submitted to this Office, Captain Poulin states:

> On or around December 21, 1998, Maj.-Gen. Penney recommended "grievance" as one option that I may wish to pursue to resolve my situation. He did so with the knowledge that the DCFGA was Lt.-Col. P. Pellicano, the spouse of the secretary for DGPA. He was also a rank below one of the alleged harassers (i.e. the then Col. Samson).
>
> His actions were in direct violation of CFAO 19.39 (para. 46). It states that investigators of harassment (abuse of authority) "... In order to ensure impartiality and the perception of impartiality it will be necessary to seek an investigator from a different unit or workplace. (CFAO 19.39, para 46 (a)).
>
> An investigator must be chosen who neither has any interest in the outcome of the investigation, nor is perceived to have any personal link to anyone with an interest in the outcome. (CFAO 19.39, para 46(b)).
>
> The investigator ... should be equal or superior in rank to both the complainant and the alleged harasser (CFAO 19.39, para 46 (c)).
>
> The sum of Maj.-Gen. Penney's actions in this instance resulted in a clear violation of his responsibilities as an officer under QR&O 4.02(c). It states: "An Officer shall promote the welfare, efficiency and good discipline of all subordinates."

Captain Poulin's concern that Major-General Penney's recommendation of redress of grievance as an option to resolve complaints was improper stems from correspondence forwarded to him on December 21, 1998, in which Major-General Penney indicates:

> Recognizing the obligation of the organization to be diligent in addressing allegations of reprisal, there are options available to you should you choose to pursue them. These would include, but not be limited to, making a complaint to the DND/CF Ombudsman, Mr. A. Marin, at 992-0787, seeking assistance from the office of Alternative Disputes Resolution, Mr. P. Sterne, at 996-0546, and/or lodging a grievance. Regarding your interest in obtaining legal counsel, you can make application to the Director of Law/Claims pursuant to the Treasury Board policy on "Indemnification of and Legal Assistance for Public Servants."

Assessment

I am satisfied that Major-General Penney did not abuse his authority or improperly exercise his discretion in presenting to Captain Poulin the use of the redress of grievance system, together with several other options, as a means to resolve his complaints.

The context in which Major-General Penney's correspondence was forwarded to Captain Poulin has been reviewed previously in this report. Major-General Penney was responding to Captain Poulin's concerns about the decision of the Chief of Review Services to retain a private consultant, Mr. Cantin, to investigate Captain Poulin's allegations of harassment and retaliation. In the course of responding to Captain Poulin's concerns about that decision, Major-General Penney outlined various other options which Captain Poulin could pursue to address his concerns if he so chose. There is no indication that Major-General Penney suggested that any of these options, including filing a redress of grievance, should be preferred over the other options. Indeed, given Captain Poulin's knowledge of DND and CF policies and procedures, it is more than likely he was already aware of the CF redress of grievance system as an option available to address his concerns.

In an interview with my investigators, Major-General Penney stated he did not know Mr. Pellicano, the Director CF Grievance Administration, nor did he have any knowledge regarding Mr. Pellicano's relationships. Whether or not Major-General Penney was aware that Mr. Pellicano's spouse was the secretary to the Director General Public Affairs would not, in my view, impugn his decision to present redress of grievance as one option for Captain Poulin to resolve his concerns. Should Captain Poulin have decided to proceed with the redress of grievance option, clearly it would have been incumbent upon the CF to take steps at that point to ensure appropriate measures and safeguards were put in place to avoid any potential conflict of interest as a result of Mr. Pellicano's personal circumstances.

F. Allegation against Lieutenant-Colonel Miville Deschênes

Lieutenant-Colonel Deschênes had been released from the CF at the time that the interim report was completed. My investigators made numerous attempts to contact him to provide him with the opportunity to receive a copy of the relevant portion of the interim report and offer any feedback but received no response to their messages.

Allegation

Informing that harassment investigation could proceed without Captain Poulin's participation

Captain Poulin stated in his written complaint:

> On or around November 10, 1998, at approximately 16:05 hrs, Maj. Deschênes said the CRS investigation would proceed regardless of my objections and without my participation knowing this statement to be false.
>
> On or around November 26, 1998, during the afternoon, I met with Mr. J. Maurice Cantin and Maj. M. Deschênes in the conference room near his (Deschênes) office. During our conversation, Maj. Deschênes admitted that Mr. Cantin still did not have any terms of reference to proceed. Still, Maj. Deschênes said, in light of everything we had discussed during this exploratory meeting, that I would have until December 7, 1998 to inform him whether I would co-operate or not with the administrative investigation and that Mr. Cantin would proceed regardless. Maj. Deschênes knew this assertion to be false.

At the time in question, Lieutenant-Colonel Deschênes was an officer with the Military Police who was a Senior Analyst with the Director Special Examinations and Inquiries, a directorate under the Chief of Review Services. Its role is "to plan and conduct special examinations and inquiries into allegations or instances of impropriety, mismanagement and/or other irregularities in the DND and CF."

Ombudsman's investigators interviewed Lieutenant-Colonel Deschênes in his office at 101 Colonel By Drive in Ottawa on August 1, 2000. Lieutenant-Colonel Deschênes consulted the professional diary he maintained in his capacity as a senior analyst and also provided Ombudsman's investigators with a copy of the relevant portion of the diary.

According to the diary, Colonel Maillet contacted Lieutenant-Colonel Deschênes on October 15, 1998 regarding the need to examine allegations of reprisal and harassment contained in the speech Captain Poulin submitted to the organizers of the CF Defence Ethics Conference. Lieutenant-Colonel Deschênes attempted to contact Captain Poulin on October 16, 1998 and left a message asking Captain Poulin to contact him.

Lieutenant-Colonel Deschênes first met with Captain Poulin on October 19, 1998. According to Lieutenant-Colonel Deschênes' notes, Captain Poulin wanted a list of remedies that might be afforded him as the outcome of an administrative investigation. Captain Poulin's diary also records their meeting of October 19, 1998. According to both diaries, Captain Poulin wanted to wait until learning the results of the CFNIS investigation before proceeding with an administrative investigation into harassment.

Lieutenant-Colonel Deschênes' diary entry dated October 29, 1998 indicates that Captain Poulin questioned whether an administrative investigation to examine Captain Poulin's allegations of harassment and reprisal could proceed without Captain Poulin's participation. In response, the entry records that Lieutenant-Colonel Deschênes:

> ... provided Capt. Poulin [with] a memo signed by MGen Penney advising him that an [administrative] inquiry would take place regarding the alleged reprisals he suffered as a result of his memo regarding Col. Labbé. I also informed him of the possible outcome of such an inquiry based on M. Cantin's experience ... Capt. Poulin asked how such an investigation could take place without his participation. He understood, based on my explanation that it may not be perfect without his input. I told him that I would ask M. Cantin if he can carry on such an investigation without the complainant's full support.

During his interview with Ombudsman's investigators, Lieutenant-Colonel Deschênes related the concerns that Captain Poulin appeared to have about the administrative investigation and his assessment of the situation:

> ... there was this feeling of unfairness, unjust, not neutral enough, bias. At the beginning maybe [Captain Poulin] felt uncomfortable with the process ... and I tried my best to be as open as I could be with Bruce in telling him the process, the memos, the thinking, the reasoning. Complete openness and trust with this guy. Saying, "you're a trustworthy employee ... you deserve the truth. This is what's going on." [I told him] the backdoor discussions and things that don't get on paper: "this is what's happening, Bruce." I knew that he would take notes of everything because that's the

> way he is and that' s perfect. So our intention was to be open and provide him with a professional. The top harassment investigator available, Mr. Cantin, to provide him an unbiased report on his harassment.

On November 26, 1998, Captain Poulin attended a meeting with Lieutenant-Colonel Deschênes and Mr. Cantin, the consultant who had been retained for the proposed administrative investigation. Captain Poulin provided this Office with a copy of an audiotape of this meeting. On it, Captain Poulin is heard asking whether they were going to proceed despite Captain Poulin's not having indicated his intention to participate. Lieutenant-Colonel Deschênes indicates their intention to start and asks Captain Poulin to provide his decision regarding his participation or otherwise by December 7, 1998.

Major-General Penney signed the terms of reference for the investigation into the allegations of reprisal and harassment on December 7, 1998. As previously noted, Captain Poulin wrote to Major-General Penney on January 8, 1999 agreeing to participate in the investigation led by Mr. Cantin subject to two conditions, which he outlined. Ultimately, the investigation never got off the ground. As Mr. Cantin informed Major-General Penney on March 8, 1999, his efforts to investigate the matter had so far been fruitless. According to Mr. Cantin, Captain Poulin asserted he was unable to participate in the investigation until he received copies of information from the CFNIS for reference. Mr. Cantin further indicated that, in his view, he would be unable to proceed with the investigation unless Captain Poulin agreed to be interviewed to provide details of the allegations, including facts and names of individuals.

As I have already noted, when it became clear the Chief of Review Services' investigation was not progressing, Major-General Penney sought to refer Captain Poulin 's complaints to the Ombudsman's Office for investigation.

Assessment

I am satisfied that Lieutenant-Colonel Deschênes did not act improperly or provide Captain Poulin with inaccurate or misleading information. In informing Captain Poulin that the administrative investigation could proceed without his participation, he was responding to Captain Poulin's inquiry stemming from his concern that the investigation was to be conducted by Mr. Cantin. I am satisfied that Lieutenant-Colonel Deschênes clarified to Captain Poulin the limits of any investigation that proceeded without his participation. He also advised Captain Poulin that he would check with Mr. Cantin to determine whether it was possible to carry out an investigation without Captain Poulin's full support.

It appears that, once Mr. Cantin became familiar with the nature of the allegations being made and their extent, he concluded that he could not proceed without Captain Poulin's agreement to be interviewed and to provide details of the allegations, including facts and the names of individuals.

It should be noted that it was open to the Chief of Review Services to decide to continue with the administrative investigation even if Captain Poulin was not amenable to having it proceed. Although Captain Poulin was the person allegedly affected by incidents of harassment and retaliation, after having made these allegations in the speech he submitted to the Defence Ethics Conference, he did not have exclusive ownership over them. While it is exceptional that an investigative body will proceed to investigate allegations without the agreement of the person who is affected or who brought them forward, there may be instances where it is appropriate. Since the allegations contained in Captain Poulin's speech were serious and were the subject of much media attention, persons who could be identified as subjects of Captain Poulin's allegations also had an interest in having the complaints investigated to determine whether the allegations were substantiated or not. In my view, it was clearly within the discretion of the Chief of Review Services to decide that the public interest warranted an investigation of the matter, even if Captain Poulin did not wish to participate.

Clearly, an investigation into harassment or retaliation that proceeds without the cooperation of the person directly affected will be limited and have to overcome hurdles in seeking information from other sources. If the person directly affected is the only one who can provide necessary details such as names and dates and is unwilling to do so, the investigation will likely not be able to proceed. I am satisfied that Lieutenant-Colonel Deschênes made these limits clear to Captain Poulin during their discussion on this issue.

G. Allegation against Brigadier-General Lise Mathieu

Brigadier-General Mathieu responded in writing to the relevant portion of the interim report on March 8, 2001, advising that she had reviewed the report and had no comments to offer.

Allegation

Interference with alternative dispute resolution mechanism

Captain Poulin states in his written complaint:

> On or around May 26, 1999, Col. Mathieu, who is not in my chain of command, directly interfered with an alternative dispute resolution mechanism that was none of her concern thereby preventing me achieving any closure to my current situation.
>
> Col. Mathieu's actions were also a violation of QR&O 4.02(c). It states: "An Officer shall promote the welfare, efficiency and good discipline of all subordinates." Col. Mathieu's direct intervention prevented my family and I from bringing closure to this whole affair.

At the time she became a subject of Captain Poulin's complaint, Brigadier-General Mathieu was the Executive Assistant to the Chief of the Defence Staff and held the rank of Colonel. Ombudsman's investigators interviewed her on December 9, 1999 in her office at 101 Colonel By Drive in Ottawa. A subsequent interview was also deemed necessary, and Ombudsman's investigators interviewed Brigadier-General Mathieu in the boardroom of her current office located at the CF Medical Group Headquarters, 1745 Alta Vista Road, Ottawa on November 20, 2000.

Colonel Mathieu confirmed to the Ombudsman's investigators that she had received a call from Mr. Daniel Gervais, Senior Counsel and Director of Claims and Civil Litigation, DND and CF Legal Advisor, who informed her that Captain Poulin wished to enter mediation to resolve his complaints. Brigadier-General Mathieu stated to my investigators:

> … at that time I questioned him and I said, and you're asking me because … I didn't really see why they were calling the CDS' s office to ask about Captain Poulin

> wishing to do a mediation. [Mr. Gervais] explained that [he was calling the CDS's office] because some of [Poulin's] allegations had something to do with the Provost Marshal.

Then Colonel Mathieu had been the recipient of Captain Poulin's military police complaints against three members of the CFNIS and the CFPM dated November 18, 1998, previously referred to in this report. Brigadier-General Mathieu recalled having read the complaints and, on advice from the Judge Advocate General's Office, referred them back to the Deputy Provost Marshal Professional Standards for clarification. The basis for the decision to seek clarification was that it was not apparent on the face of the complaints whether the CFPM was directly implicated in any of the matters that were the subject of complaint.

Colonel Mathieu attributed her response to Mr. Gervais' inquiries about dispute resolution options for Captain Poulin to her earlier involvement with Captain Poulin's military police complaints. Based on her previous assessment of Captain Poulin's complaints, she concluded that there was no basis to include the Chief of the Defence Staff in any dispute resolution process since the incidents did not appear to directly implicate the CFPM.

Colonel Mathieu further explained her decision that it was not appropriate for the Chief of the Defence Staff to become involved in the mediation process as follows:

> … the CDS is the end of the line … if he takes on first line things, where does it go after? So our office normally drives things back to the chain of command and says "if you run into trouble and you need the Chief, okay" but really if you start here, then what? So to me … the first thing I do when I get something like this I say "OK. What's this about?" In this case, in my view, [it] had nothing to do with the chief at this point. [There was] no reason to come all the way to the top for … "I'm ready to mediate. Anybody want to mediate with me so to speak?"

She further stated:

> … we get all kinds of requests … and our aim is always to put it where it's going to be the most effectively dealt with. In this case I went to General Penney 'cause I knew that he was actively involved in trying to help Captain Poulin. I knew there was no point in bringing it back to DGPA.

Thus, just as Captain Poulin's earlier military police complaints were returned to the Deputy Provost Marshal Professional Standards as noted previously in this report, his request for mediation was referred back to the Chief of Review Services.

Assessment

I am satisfied that Colonel Mathieu's decision to refer Captain Poulin's complaints back to the Deputy Provost Marshal Professional Standards and the Chief of Review Services was not an improper exercise of her discretion. As the Executive Assistant to the Chief of the Defence Staff, Colonel Mathieu was responsible to ensure that matters referred to the Chief of the Defence Staff were properly reviewed to determine the most appropriate level of the chain of command to deal effectively with the issue. I am not satisfied that her assessment that the Chief of the Defence Staff's intervention was not required to pursue alternative resolution options in Captain Poulin's case was based on improper considerations.

I am also not satisfied that Colonel Mathieu's actions were designed to interfere with Captain Poulin's efforts to have his complaints mediated. Clearly, there was nothing to prevent alternative dispute resolution from being pursued at lower levels of the CF chain of command. If alternative dispute resolution was attempted, the Chief of the Defence Staff was always available in the future to facilitate any resolution that could not be achieved at lower levels.

Recommendations and conclusion

Summary of recommendations

1. **Procedures be adopted to ensure that correspondence submitted for the action of leaders and managers at any level is routinely logged and monitored to ensure a timely response by the appropriate level of the chain of command.**

2. **The records-keeping and monitoring procedures should require that all Canadian Forces members have a right to receive written acknowledgement of their complaint and a written response detailing any action taken in response, including the results of any investigation (wherever appropriate.)**

3. **The records-keeping and monitoring procedures should require that, if no written response or follow-up action is logged, the matter be brought forward immediately to the attention of the officer who is the immediate superior of the member who failed to discharge the responsibility of logging or following up the complaint. If complaints are not logged or dealt with promptly, the matter should be referred to the Office of the Ombudsman for review.**

4. **General Baril should, as the commander of the Canadian Forces personnel, issue an acknowledgement of failure and regret on behalf of the chain of command to Captain Poulin and confirm to him personally the Canadian Forces' commitment to implementing procedures to ensure that when members bring forward issues and concerns to the chain of command they will be responded to in all cases.**

5. **The Canadian Forces National Investigation Service provide to Captain Poulin, in writing, confirmation of its decision not to investigate his complaint that his personal information was leaked to the media in June 1998, including an explanation as to why this matter falls outside of the mandate of the Canadian Forces National Investigation Service.**

6. **The official letter dismissing Captain Poulin's military police complaints should be reissued removing the reference to "vexatious."**

7. The Chief of the Defence Staff should ensure that appropriate directives are put into place to prevent actions by Canadian Forces members that constitute, or may be perceived by a reasonable person to constitute, attempts to influence the course of military police investigations outside of the normal investigative process.

8. The Chief of the Defence Staff should issue the appropriate directives to ensure that, where incidents are referred to the Canadian Forces Provost Marshal for investigation, the referral comes from persons within the chain of command who are not identified as potential subjects of any allegations to be investigated.

9. The Canadian Forces National Investigation Service issue a further press release to inform the public of the complete results of its investigation into the allegations against Lieutenant-General Leach, including the fact that evidence was uncovered that other individuals within Lieutenant-General Leach's office in July 1996 had seen the memorandum submitted by Captain Poulin and were aware of its contents. The press release should also include the Canadian Forces National Investigation Service recommendation that the matter be reviewed from an administrative perspective by the chain of command.

10. The Canadian Forces should issue an *ex gratia* payment to Captain Poulin for an amount equivalent to his costs incurred for legal representation in order to obtain advice and to attempt to resolve the issue surrounding the critical comments made about him by Lieutenant-Colonel Robertson in his letter to Colonel Labbé.

11. The Chief of the Defence Staff direct that a review be conducted to confirm the administrative action taken against Lieutenant-Colonel Robertson and that the necessary steps be taken to document such action.

Conclusion

My function as Ombudsman is to assist in the resolution of individual complaints and to contribute to substantial and long-lasting improvements in the welfare of employees and members of the Department of National Defence (DND) and the Canadian Forces (CF) community in general. I have therefore approached the complaints raised by Captain Poulin with a view both to providing closure for him and those implicated in his complaints, and to improving the welfare of members of DND and the CF in general.

To be sure, many of the complaints Captain Poulin brought forward proved, on investigation, to be unfounded. Many people became implicated in the long ordeal that began with Captain Poulin's effort, on July 9, 1996 and again on July 15, 1996, to speak out on matters sufficiently important that he took the personal risks that reporting superior officers can entail. Many of those implicated did nothing wrong, undoubtedly contributing to the perception by some that Captain Poulin was a perennial complainer. The process whereby Captain Poulin's reputation was tainted and other persons exposed to the stress of being the subjects of his complaints might well have been prevented had his initial complaints been dealt with judiciously. Instead they languished. They lay dormant until made public nearly two years later, on June 17, 1998, when Captain Poulin's original memorandum of July 9, 1996 was circulated at a press conference. In the interim, Captain Poulin had no doubt come to suspect the worst, that the CF was not interested in his complaints or in addressing injustices, that it was closing ranks to protect its own and avoid public scandal.

As a result of the circulation of Captain Poulin's original memorandum at the press conference on June 17, 1998, military police investigations were ordered, not only into the initial complaint but into the way that complaint had been handled. Those investigations culminated in a decision that was unfavourable to Captain Poulin. On October 26, 1998, he watched as the Canadian Forces National Investigation Service (CFNIS) made a public release of the results that was misleading, even if inadvertently so. It left the erroneous impression that his complaint against Lieutenant-General William Leach was without foundation and that Captain Poulin had not even taken appropriate steps to bring the complaint to the attention of anyone in his chain of command. The misleading press release could have done nothing other than to confirm Captain Poulin's perception that his complaints would not be addressed on their merits and that the system was conspiring to prevent embarrassment to itself, even at the cost of embarrassing and harming him.

A person of uncommon tenacity, Captain Poulin decided not to leave the matter alone. He laid a series of military police complaints against three of the CFNIS investigators and the Canadian Forces Provost Marshal (CFPM), and subsequently a complaint against the Deputy Provost Marshal Professional Standards. Although these complaints were dismissed, as it turns out, with good reason, they were labelled as "vexatious." Given Captain Poulin's experience thus far, the application of this label no doubt confirmed in his mind that he was not being taken seriously and would have to pay the price by being branded a trouble-maker.

After his memorandum of July 9, 1996 became public in June 1998, many incidents that occurred appeared to Captain Poulin to be acts of reprisal or retaliation, even when they were not. Other people were drawn into the affair as he complained about things that they had done or he had perceived as doing.

In the meantime, Captain Poulin's distrust of the CF had increased so much that he also lost faith in the internal mechanisms available to settle disputes. Rather, he perceived conflicts of interest in attempts to help him resolve disputes, thereby leading to still other allegations of impropriety.

Captain Poulin was so determined to fight injustice that he ultimately lost the ability to identify who was harming him and who was not. A man who had begun by attempting to redress what he conscientiously and firmly believed to be serious wrongs was left so isolated that he indeed began to make unwarranted complaints. Furthermore, Captain Poulin was no longer the only victim of a process gone wrong. More victims were created.

DND and the CF have made a commendable commitment to openness, transparency and accountability and to the fair treatment of all members. The importance of public respect and the maintenance of high morale within DND and the CF have been given new emphasis, and new institutions, including my own Office, have been set up to accomplish these goals. Nonetheless, this episode demonstrates the importance of living up to commitments, not just expressing them. When concerns are ignored, whether because of administrative deficiencies or because of an ethos in which problems are swept under the rug out of a misguided sense of loyalty, the promise of openness, accountability and the fair treatment of all is broken, the purpose of those commitments is defeated, and ultimately the reputation of the CF is harmed.

The events that transpired in this case pose a genuine threat to the good repute of DND and the CF. Complaints were not addressed but were left unattended, creating the impression that they were being buried. Once the news broke and the CFNIS investigations were commissioned, one of the subjects of the complaints hand-delivered a private missive to the CFPM, giving one side of the story and inscribing words that would raise the suspicion of any reasonable person: "P.S. The original copy of the handwritten memo is for the CFPM. I have retained a copy for myself. No other copies have been done."

When the investigations ended and the results were released, the headline of the press release was inaccurate, proclaiming that there was no evidence to support the allegation involving Lieutenant-General Leach when this was not so. Furthermore, the press release failed to mention that the report of the results of the investigation recommended an administrative review into the matter. Using ill-chosen language, it created the impression that no-one but the Lieutenant-General had ever seen or been told about the memo, when in fact Major Michel Lavoie had advised investigators that he had seen the memo and had discussed it both with Captain Poulin and Lieutenant-General Leach. Notwithstanding my assessment that the press release was not intentionally misleading, there will be those who will see it as an example of spin-doctoring of a kind that is entirely antithetical to the openness and transparency that has been promised. This is a tragedy, not only for those who have been touched personally by these events, but for all who take pride in DND and the CF and the commitment to openness, transparency and fairness.

The only way, in my view, to reduce the damage that has been done is to benefit from experience by giving serious consideration to all of the recommendations of this report. Indeed, all those involved in leadership roles must demonstrate their commitment to the principles of openness, transparency and fairness by taking measures within their own spheres of influence to show that in the future, complaints will be handled effectively and with integrity and that those who have the courage to come forward will be listened to.

The paramount importance of living up to our commitments by acknowledging what has transpired and taking steps to repair the harm done to the reputation of DND and the CF impels me to make the following observation. As described in this final report, there has been resistance to the recommendations that I have made from the current CFPM and the Deputy Provost Marshal Professional Standards. Their objections are based on concerns about jurisdiction, or "turf." Such objections are unbecoming. They are formalistic and threaten to undermine the benefits that can be derived from this difficult venture. The Ombudsman's Office is not attempting to usurp anyone's control or replace anyone's function. I could not do so if I tried, because I lack the authority to compel anyone to do anything or to make final decisions. Rather, my function is to investigate, study, make recommendations and give aid. My staff and I have expended considerable time, energy and thought to craft appropriate solutions to real problems in ways that advance the interests of individual members of DND and the CF and, in the process, of DND and the CF community in general. That assistance should be accepted, not declined on legalistic, particularly inaccurate legalistic, grounds.

It should also be noted here that, while the Chief of the Defence Staff has a commendable and hearty, indeed essential, commitment to respecting the independence of the CFPM and the CFNIS, I am convinced that he has misconceived the application of the Accountability Framework. There is nothing in the Accountability Framework to prevent the implementation of Recommendations 7 and 8. Those recommendations are fitting, necessary and should be accepted.

In closing, Mr. Minister, it is my hope and fondest expectation that we will all learn from what has happened here. It is my hope and fondest expectation that this odyssey will come to a close for Captain Poulin and for all of those who have been implicated in this matter. And it is my hope and fondest desire that the solutions that my staff and I have crafted will be implemented, that these recommendations will not die on these pages. I would ask you to use your good offices to prevail on those who would resist to reconsider their positions and place the best interests of DND and the CF and its members first.

Appendix I:
Memorandum from Captain Bruce Poulin, July 9, 1996

AS PROMISED.

I TRIED AT 10·40 TO GET YOU A COPY VIA MAJOR DUCHESNEAU

— SRT

MEMORANDUM

09 Jul 96

DCOMD LFCHQ

DISTURBING REVELATIONS WHILE AT CLFCSC

1. Because of my concern for the reputation of the CF coupled with my reponsibilities as a member of the G5 cell, I feel that I should bring the following incidents to your attention before they become known to the general public.

2. On the evening of Friday, 03 May 96, I saw Col Labbé rubbing the back of one of the Fort Frontenac female employees. That evening, she had been given the night off so that she - along with the entire FFOM staff - could join the students of course 9601 in a TGIF aimed at thanking them for their support.

3. Several weeks later I approached the woman in question, took her aside, and asked her about the aforementioned incident. She replied that she was often terrified of Col Labbé during many of the FFOM (Fort Frontenac Officers Mess) evening functions. In fact, she later added, she often joined the largest group of people located in the Mess so that she could feel somewhat more secure from Col Labbé`s advances (This happened even when she was working that same evening). She then added that although I (Capt Poulin) may have been embarrassed by Col Labbé`s behaviour then (May 96), I had not seen anything when compared towards his behaviour towards her at X-Mas party held in Dec 95.

4. The woman in question then concluded her conversation with me by stating that she had complained to her superior about Col Labbé`s behaviour towards her although she did not mention what actions (if any) had been taken to address her complaints.

5. The last comment I should like to make here is that twice during our conversation, she intimated that Col Labbé had told her that he did not wish to FORCE HIMSELF ON HER but that HE LIKED HER A LOT.

6. I must confess that I am not aware whether this matter is being pursued further although I am aware that this kind of harassment could have very serious repercussions on Col Labbé and the CF in general should it be revealed to be true.

7. What is even more revealing is that when other students where made aware of the said earlier facts they did not seemed surprised by Col Labbé`s behaviour. Instead, they told me about another incidents they had witnessed first hand. Namely:

a. While Col Labbé was a Battalion commander in BFC Valcartier in the late 1980`s, he arranged for transportation along with drivers to take all of his officers dressed in uniform (combats) to a local strip club. You should note that one of the girls` striptease acts included dressing up in one of the officers` uniforms.

b. As we waited to board our buses for the CFB Trenton airport on 4 May 96, several candidates on the CLFCSC course began drinking at the FFOM in the presence of Col Labbé. When the buses`arrived the officers brought their drinks on board the bus. Approximately 20Km from CFB Trenton the officers who had been drinking convinced the military bus driver to pull over so that they could urinate outside. The bus driver obliged and the officers in question got out and began to urinate along the side of this CF bus which was parked on the side of Hwy 401. To make matters worse, some of these same officers then brought their glasses of Jack Daniels into the CFB Trenton air terminal and began drinking whilst they waited to get their boarding passes. Once again, Col Labbé was present but he took no action.

8. Rest assured that I am not doing this with any expectation of either disciplinary and/or administrative action. Rather, I am doing so because I feel that these facts may require further investigation because of their implication should they prove correct. Second, given the sensitivity of the matter, I felt that this whole issue could only be dealt with at your level. Finally, you should also be aware taht several officers on my course told me that they were prepared to use this information should they feel jilted by Col Labbé in the future in order to get even.

9. Sir, I trust that you will see my actions as one of loyalty towards you and the CF and not one of disloyalty towards a superior officer. I fear that Col Labbé`s failures will be perceived by the public as some of my own failures and I refuse to accept that kind of stereotyping lying down. So, I felt it necessary to at least express my concerns with you at this time.

B. Poulin
Capt
G6 Speechwriter

Appendix II:
Memorandum from Captain Bruce Poulin, July 15, 1996

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MEMORANDUM

15 Jul 96

DCOMD LFCHQ

COMMENTS ON COURSE 9601 AT CLFCSC

Ref: Conv DComd LFC/G5 Speechwriter, 09 Jul 96.

1. As we had discussed as per Ref, I wish to comment on my experience while I attended CLFCSC 9601.

2. Training is the glue that keeps the army together. It is the link between what we do in peace time and what we do in war. At the same time, all leaders and potential leaders of others carry what might be called a moral imperative as an essential part of the burden of leadership. This applies to actions of one`s word, deed and signature. It furthermore applies to actions, both explicit and implied. It is with these thoughts in mind that I wish to make my comments and concerns known to you sir.

3. I acknowledge that there are many fine Directing Staff and course supervisors in the Canadian Army and that they have impressive amounts of operational experience, both in working with teams under stress and in training teams to perform in difficult situations. Unfortunately, some weak instructors appear to make-up a sizeable proportion of the staff at CLFCSC.

4. As the editor for the CLFCSC Course 9601 Grad Book, I came into contact with almost every student on the course. I would also add that over the course of several months, I heard of many incidents and anecdotes which effected our otherwise very enthusiastic group. While there were many positive things that could be mentioned here, I would like to remain focused on the subject at hand. That is to say, on those incidents which had a negative effect on the group as seen from a training perspective. You will note that I am commenting only on those issues which are disturbing and had an effect on a significant number of students in the group.

5. You will also note that I wish to keep the name of specific students confidential so I will limit my examples, as much as possible, to events I was privy to. You should also note that I currently possess much of the documentation to corroborate the assertions I will be making. I chose not to include them at this point because of all of the vetting required and because I only

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7 PAGES
0908 hrs
19 Jun 98

wanted to bring these incidents to your attention. In no particular order, they are:

MARKING SYSTEM

6. Some of the lowest points on the course occurred immediately after marks were handed out to the students. The primary cause for the angst, I was able to gather from the students was not the mark itself, rather it was the perceived huge discrepancy between the marks awarded by each of the respective Directing Staffs (DS). Many students agreed that the root of this problem was the lack of a Common training standard (CTS). For example:

a. On one occasion, a student wrote a memo commenting on the fact that he felt he had been marked more conservatively than many of his peers both within the syndicate and among his peers in other syndicates. The DComd`s response was to say among other things: `all question of fairness aside, what Capt XXXXXX needs to understand above all else is that the grade assigned by a particular DS for a particular exercise is only relevant within the teaching and assessment framework established by that DS; comparing similar products and associated grades outside one`s syndicate might be interesting, but it can lead to few useful conclusions with respect to the correlation between grade and product. I would like to posit here that having no correlation between grade and product is akin to training a marksman on a range without allowing the soldier to go and see whether he/she either hit the target, or if he/she had even come close.

b. On another occasion a student felt he was singled out from his peers and assessed rather harshly on a written assignment, so he wrote a redress of grievance listing all of the reasons he felt that he was given the mark in question. The DComd wrote a response which addressed some but not all of the concerns (especially those comments that accused the DS of lying about some of his assertions in order to justify the mark awarded). The student then, in turn, wrote a memo citing that not all of his concerns had been addressed. The next morning he had to see the Chief of Staff (COS) where the memo was discussed and then he was placed on verbal warning. The COS stated that it was not related to the memo written the day before, but rather for a thank you speech he had delivered 6 days earlier, although the DComd had thought it had been very appropriate at the time. This kind of mean-spirited

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vengeance was not well received by either the student nor the student body.

c. It was common on CLFCSC 9601 to have one DS type a report on a written assignment that was three pages long while another DS would write only four lines. In both cases, they were commenting on the same kind of written work. Needless to say, many students felt that they were not being assessed neither equally nor fairly which caused some resentment among students.

d. Some of the comments found on the reports on the written assessments were also troubling. For example, one DS commented: `Had you had another weak paragraph...(it)would have lead to a failed estimate`. I suppose if the student in question had had another strong paragraph he would have had a higher mark. The point I wish to make sir is that the relevance of the comment seems dubious. Other comments such as `This is an estimate not a statement to the press` were seen by several students as a poor example of professional behaviour particularly since the subsequent mark awarded was no joking matter.

e. On another occasion, one of the DS wrote a letter to all of his students prior to the final written estimate and stated `I would be happy to discuss your grading... but hasten to remind you that the grades are NOT negotiable (DS emphasis). Stating that marks were not negotiable regardless of the assessee`s comments caused some resentment among the students in that syndicate regardless as to whether or not they would be dissatisfied with their mark.

f. Another example of a poor marking attitude occurred in the third tutorial. The DS for one of the syndicates commented that if anyone did not complete all of the assigned tasks for the written assignment he would have to fail the individual(s) for submitting incomplete work. After the written estimates were submitted, corrected and returned it became known that some students from his syndicate had not submitted all of the required documents. The question was then raised with the DS who had made the comment earlier. His response was that if this had been tutorial two he would have failed the students in question, however, this was tutorial three with only two weeks to go and he saw failing anybody know as a punishment not only for the student but also for him (i.e. he would have to work over the week-end). The angst reached new heights

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when it was revealed that the individuals who had submitted incomplete work did not even receive the lowest marks in the syndicate. Rather, many of those who had submitted all of the required work, albeit in less detail because they provided all of the required work, were given many of the lower grades.

7. In sum, I would like to argue sir that providing exercises, either written or oral, with little formal feedback accomplishes very little. Furthermore, a spirit of professionalism cannot flourish without a standard. In this case, each syndicate had their own DS evaluation standards and during the course each student changed syndicates and hence DS, three times. This confluence of factors lead to much angst among the student body.

TUTORIAL ASSESSMENTS

8. Both the mid-tutorial and end tutorial assessments also caused some ill-feelings among the group for a variety of reasons. Once again, the discrepancy between the DS` *modus operandi* was seen as the root cause. For example, some DS submitted copies of their mid-tutorial assessment to the students. Some did not. Some used the same format as the end tutorial assessment while others did not. Some DS did not even use any of the evaluation words normally associated with assessments nor assign a mid-tutorial mark or even refer to the end tutorial criteria for mid-tutorial assessments. In one instance:

a. Under the criteria of written work one DS stated `Extremely neat`.

b. Under the criteria marked `overall` the DS wrote `gives impression of working hard to keep up`. Does this mean the students works hard and should be commended for it or that he, in fact, is weak.

c. One last example relating to marks occurred during tutorial one when a student was given a C grade when all of the indicators pointed towards a higher grade. For example, this student wrote an Operations Order (EX BALL POINT)and received the highest mark in the syndicate. He also submitted two other written assignments (EX FAST SHUFFLE and QUICK DRAW) and received a C+ on each. Then, according to the Student Handbook, Tutorial One has two exercises that figure prominently in the end tutorial evaluation (EX DOG WATCH, and INTREPID ACORN). In both of these exercises, the aforementioned student occupied the two most senior posts which led many students to conclude

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> he was doing very well on the course. Yet, at the end of the day, when the end of tutorial One assessments were handed out, the student in question discovered that he had only received a C. Nowhere and at no time was he given any indication of his shortcomings. In fact, it was quite the opposite. His lowest mark had been a C+. Needless to say, the C grade was not very well received by the student.

9. The observation that was brought to my attention here is that without a common assessment format and process many students felt that the institution could not identify critical processes to observe, evaluate and discuss via feedback.

TRAINING EXERCISES

10. One of the exercises (EX ROYAL FLUSH) calls for the retaking of Canada by pushing back the enemy (known as Fantasians) and restoring the international border along the Ottawa River and the St-Lawrence Seaway. In these days of political sensitivities between Canada`s two founding peoples, I fear that the idea of pushing back the enemy into Quebec in order to re-establish Canada`s international border may provide some fuel for the Quebec separatists. You should note that this whole issue surrounding the exercise consumed a lot of discussion time with the francophone students on the course. You will also note that none of the other exercises delineates between other provinces, peoples, or language - only Quebec is targeted.

REALITIES OF BATTLE

11. In April 96, I had the opportunity to speak with Comd LFC about CLFCSC course 9601. The Comd mentioned how armies tend to prepare to fight the last war. Victory, in other words constrains rather than frees the victor, and there is a danger that complacency becomes the rule. The army`s current realities of battle content specifically included two trips to Europe per year (one per course). He continued to say that he felt it was a luxury we could no longer afford given the costs compared to the return gained from the trips. On 23 April 96, I shared this view with the Comd CLFCSC and he stated that it did not matter because he had included the trips in the new training plan package (i.e. the junior and senior courses) without specifically mentioning them and the Comd LFC had already approved it. In other words, there was no need to discuss the matter any further. Needless to say, I was disappointed with his outlook towards the Commander of the Canadian Army.

DS BEHAVIOUR

[redacted]

[redacted]

12. On one occasion a DS mentioned how - during a media training exercise - one of the students being interviewed had found himself in a `tight spot`. To paraphrase the DS` words, the interviewer had the interviewee by the neck and was almost in a position to choke to interviewee. At the time, everyone understood this to be a simple figure of speech. So, although the comment itself seemed rather harmless the subsequent gesture posed by the DS was not. After making his remarks, he grabbed the student who had been interviewed and simulated choking him with his right hand around the students neck. This lasted for approximately 5 seconds. This action was done in the presence of other students. It should also be pointed out that this was the only time I personally saw any DS touch any of the students during the course which made this action all-the-more disturbing. Needless to say, it made many students feel uncomfortable.

13. I recognize that many armies of the world - in order to foster the best teacher student rapport - believe that students must be two ranks below the mentor for a meaningful mentoring relationship to exist. This being said, this relationship quick succumbs to adversity when the mentor begins exploiting his position of power and engages in unbecoming acts such as the one mentioned earlier.

RECOMMENDATIONS

14. These are but a few of the many incidents that came to my attention while I attended CLFCSC 9601. I believe that this short list will, nevertheless, suffice to show you that there is much work to be done if we intend to use CLFCSC as a model institution. Fortunately, we are at a cross-road where CLFCSC is revamping itself while the COMD LFC is calling for a return to basic ethical values. Therefore, I would suggest to you sir, in all humility, that the army is being afforded an opportunity to make substantial progress and address many of the shortcomings I mentioned earlier.

15. CLFCSC - which is seen as an instrument in developing Canada`s army leadership since its establishment - must continue to play a an effective role in our military, and educational system which must, in turn, produce first-rate planners and operators at various levels. I would posit that this can only be achieved if, among other things, we adopt or at least consider adopting some of the following recommendations:

a. All comments on written work should be on a covering page and reviewed by someone in charge of standards. The current practice of only submitting the best and worst from each syndicate to the DComd of CLFCSC does

[redacted]

[redacted]

not address the concerns of most students who are in the middle. This corrective measure would ensure, common standards within syndicates as well as between them, the comments would be relevant contrary to some of the current practices, and the award of a grade would be seen as relevant and fair.

b. A mark should be awarded at mid-tutorial evaluations and these marks must be taken into account for the end of tutorial mark.

c. The production of a CTS that would be available before the course starts, is applied during the course and is used for future courses would do wonders to address many issues raised by students regarding either the marking system and/or the tutorial evaluations.

d. A period on ethics emphasizing conduct (as opposed to rules of engagement and the law of armed conflict which comprises two of the six scenarios currently studied) be incorporated in both the junior and senior courses.

e. Any reference to Quebec being the homeland of the enemy and the Ottawa River and St-Lawrence Seaway being the international border between Canada and the enemy be removed from any and all exercises.

f. Many graduates of CLFCSC have gone on and played very important roles in this nation`s military and civilian history. Several years ago, CLFCSC began commemorating some of these high achievers by placing their photo in a distinguished guests section in one of the buildings. It is recommended that this noble endeavour be renewed. In addition, the CLFCSC could have a ceremony done in conjunction with the graduation of the senior course. This action would serve to honour those leaders whose exemplary service has benefitted the Army and reflected favourably on Fort Frontenac. I would also suggest that both LGen A. Roy and LGen M. Baril be inducted ASAP.

16. For your info.

B. Poulin
Capt
G5 Speechwriter

[redacted]

Appendix III:
Written statement of Major Michel Lavoie, July 10, 1998

WRITTEN STATEMENT - DÈCLARATION ÈCRITE
CONTINUATION

Memorandum of Captain Poulin

I, Major Michel Lavoie, voluntarily witness, at the request of the National Investigation Service, Central Region, of the facts concerning two memos written by Captain Bruce Poulin and addressed to the Assistant Commandant of the CFT in the month of July 1996.

When Captain Poulin came back from his Staff Command course in Kingston in the month of June 1996, I asked him what he thought of the course. He answered that he had noted certain deficiencies and that Colonel Serge Labbé's behaviour hadn't impressed him much.

After he told me this, I strongly recommended to Captain Poulin to put everything on paper and to address that to Major General W.C. Leach, my immediate supervisor.

As soon as I went back to work, I told the Assistant Commandant that Captain Poulin, following my recommendation, would write him a memo describing Colonel Labbé's out-of-place behaviour during his stay in Kingston, as well as the confession obtained from one of the waitresses at the Officer's Mess. He was also supposed to include his recommendations to improve the course.

In July, the month before our move to Ottawa in August, (me and the Assistant Commandant) I gave Captain Poulin's two memos to the Assistant Commandant, one describing Colonel Labbé's behaviour and the other mentioning the course's deficiencies that he observed.

It's only after the Christmas holidays, in January or February 1997, that I talked to the Assistant Commandant about the memo concerning Colonel Labbé. Captain Poulin had asked me once or twice to obtain information on the actions taken concerning his memo. I therefore asked General Leach what he had done. As he was coming out of his office, he answered: « I didn't know I had to report back to Captain Poulin. » Captain Poulin, being near the General's office door, heard that answer at the same time as I did. Seeing his *bass* reaction (General Leach) I added: « I assume it is taking care of sir ». By his facial expression, I understood that he was saying yes. After that, I never saw, noted or had any knowledge of any correspondence or discussion concerning that memo.

On June 26, during my return, back from Paris, I saw Major Leach on television in the plane. I discussed this briefly with my future Commandant (Lieutenant Colonel M. Duhamel) who was waiting for me at Moncton's airport.

On this day, this declaration is a short resume of the facts as I remember them.
Signed by Michel Lavoie
10 July 1998

Appendix IV: Memorandum from Lieutenant-General William Leach, June 17, 1998

CFPM (by hand)

EVENTS OF 16-17 JUN 98 - LFC NEWS CONFERENCE ON GENDER INTEGRATION AND ASSOCIATED DEVELOPMENTS

1. I am writing this statement at 1330 hrs 17 Jun 1998. I must get all my recollections and thoughts down quickly so this may appear to be rambling but speed is important now and neatness can come later. I will group the facts not chronologically by time but as the event has unfolded.

2. Friday 12 Jun - 1045 hrs Wednesday 17 Jun

a. A newsconference on Gender Integration originally scheduled for 12 Jun was rescheduled for 17 Jun.

b. On Friday I was told by my staff that Mr Scott Taylor wanted to have a one-on-one with me. I assumed that it must have something to do with the issue at hand but no decision was made on meeting him.

c. On Monday 15 Jun I discussed the matter with my staff and it was decided that I should meet Mr Taylor before the news conference.

d. On Tuesday 16 Jun, I met alone with Mr Taylor for 20-30 minutes. Initially I had one of my PA officers in the office with me but Mr Taylor seemed reluctant to talk so I asked the PA officer to leave.

e. Mr Taylor asked me if I could

0857 hrs 18/6/98 ../2

recall a harassment case in Kingston in mid-1996 when I would have had responsibilities for Kingston as both the DComd LFC and as Comd 1 CDN DIV. He offered more detail when I appeared confused and suggested that it would have involved a "senior officer" and it would have had to do with a happening on 3 May 96. When I still drew a blank he continued that something else had happened in Dec 95. We were going nowhere

f. I then told Mr Taylor that I would do some searching when I was in Kingston on PM 17 Jun / 18 Jun. He told me that if he had anything to jog my memory he would fax it to my office. When we parted we agreed that I would get back to him early next week (22-23 Jun). As an aside, I told him that I might do something as simple as look through the log of CFB Kingston harassment investigations for 1996 to see if I could figure out what I was after.

3. Wednesday 17 Jun

a. When I arrived in the office at 0740 hrs I was told that Mr Taylor had called to say that he had made a mistake in referring to "RMC" and that he was really talking about CLFCSC. He also mentioned to my staff, although they did not tell me, that he was going to fax something to me before the 1000 hrs news conference.

b. At approximately 1050 hrs, 10 minutes prior to my statement to the news conference, I was told that Mr Taylor had delivered an envelope that he wanted me to read before my public statement - 10 minutes remained. I said "no" to my staff and told them that I would look at it afterwards.

c. Two things happened during the news conference.

(1) During my statement Mr Taylor walked up and placed folded papers on the table in front of me. I did not look at them until after I was out of the room after question period. The contents of the envelope from Mr Taylor were not seen by me until I returned to my office. The item was a 2 page memo which I have enclosed here.

(2) The second item was when the last questioner was Michel Drapeau. He had been talking to both Scott Taylor and Art Hanger earlier and I sensed an ambush coming. He mentioned, in veiled speech, the visit of 16 Jun, wondered what my "answer" was and asked if I would commented. I offered a generic response and said that there would be more to come.

4. The Issue.

a. The memo given to me by Scott Taylor is enclosed. The

...14

handwritten notes on the top right of page 1 and beside sub-para 7.b. on page 2 must belong to Scott Taylor.

b. I do not recall ever having seen the enclosed memo. I do recall some of the thoughts that are in it but in the context of another document that I will mention later.

c. I note that the memo is dated 9 Jul 96. At the time LFC HQ in St-Hubert was in chaos, getting ready to close and relocate the HQ to NDHQ. I was working out of both ends (St-Hubert and NDHQ) because it had already been agreed that I would be the advance man in NDHQ. To this day I know that we probably dropped a few things in the move, but this memo rings no bells at all.

d. Noting that the enclosed memo is signed by Capt B Poulin, I wish to recall three things that were going on with respect to Capt Poulin which I was personally handling.

(1) His posting. There was a fight going on over whether he should go "back to the artillery" or to NDHQ where we wanted him to go. I became the mediator and he was posted to Ottawa - where he wanted to be.

(2) Education Reimbursement. There was a battle going on over the reimbursement for his post-graduate education. I got directly involved and this issue was not resolved until early 1998 - in his favour with my involvement throughout.

(3) His Critique of his CLFCSC Course. Capt Poulin had attended the course and was not pleased with a number of aspects of it. I encouraged him to give me his critique because we were re-writing the course and all views were welcome. I recall that he had comments about not only the course content but about DS orientation and qualifications and about the leadership style and habits of the Commandant, Col Serge Labbé. I recall in the discussions we had that I admitted a frustration with the Labbé matter because of his part in the Somalia Inquiry and the fact that, right or wrong, we could not 'pre-judge' him (he was entitled to due process) but that his departure from CLFCSC would allow us to address the role model issue. In my own mind I knew that the officer would be dealt with through the process but we had to let that work out.

(4) The harassment situation described in the enclosed memo

... /6

is news to me and there is only one right thing to do - get it to the CFPM for his review soonest!

5. It is now 1645 hrs and I am passing this handwritten note to the CFPM immediately. I will reflect tonight and if any other thoughts come to mind, I will add an addendum!

6. I saw the Acting CDS in the CDS office around 1300 to advise him of the situation and my intended course of action.

7. For the CFPM I request that you take whatever follow-up action is necessary, as soon as you can.

LGen.

PS. The original copy of this handwritten memo is for the CFPM.
I have retained a copy for myself.
No other copies have been done.

JMLCdi
50.

In his memorandum, Lieutenant-General Leach wrote to then Colonel Samson:

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   b. *On Friday I was told by my staff that Mr. Scott Taylor wanted to have a one-on-one with me. I assumed that it must have something to do with the issue at hand but no decision was made on meeting him.*

   c. *On Monday 15 Jun, I discussed the matter with my staff and it was decided that I should meet Mr. Taylor before the news conference.*

   d. *On Tuesday 16 Jun, I met alone with Mr. Taylor for 20-30 minutes. Initially I had one of my PA officers in the office with me but Mr. Taylor seemed reluctant to talk so I asked the PA officer to leave.*

   e. *Mr. Taylor asked me if I could recall a harassment case in Kingston in mid-1996 when I would have had responsibilities for Kingston as both the DCOMD for LFC and as Comd 1 CDN DIV. He offered more detail when I appeared confused and suggested that it would have involved a "senior officer" and it would have had to do with a happening on 3 May 96. When I still drew a blank he continued that something else had happened in Dec 95. We were going nowhere.*

   f. *I then told Mr. Taylor that I would do some searching when I was in Kingston in PM 17 Jun/18Jun. He told me that if he had anything to jog my memory he would fax it to my* office. When we parted we agreed that I would get back to him early next week (22-23 Jun). As an aside, I told him that I might do something as simple as look through the log of CFB Kingston harassment investigations for 1996 to see if I could figure out what I was after.

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4. ***The Issue***

a. ***The memo given to me by Scott Taylor is enclosed. The hand-written notes on the top right of page and beside subpara 7.b. on page 2 must belong to Scott Taylor.***

b. ***I do not recall ever having seen the enclosed memo. I do recall some of the thoughts that are in it but in the context of another document that I will mention later.***

c. ***I note that the memo is dated 9 Jul 96. At the time LFC HQ in St-Hubert was in chaos, getting ready to close and relocate the HQ to NDHQ. I was working out of both ends (St-Hubert and NDHQ) because it had already been agreed that I would be the advance man in NDHQ. To this day I know that we probably dropped a few things in the move, but this memo rings no bells at all.***

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frustration with the Labbé matter because of his part in the Somalia Inquiry and the fact that right or wrong, we could not prejudge him (he was entitled to due process) but that his departure from CLFCSC would allow us to address the role model issue. In my own mind I knew that the officer would be dealt with through the process but we had to let that work out.

(4) The harassment situation described in the enclosed memo is news to me and there is only one right thing to do - get it to the CFPM for NIS review soonest.

5. It is now 1645 hrs and I am passing this hand-written note to the CFPM immediately. I will reflect tonight and if any other thoughts come to mind, I will add an addendum.

6. I saw the Acting CDS in the CDS office around 1300 to advise him of the situation and my intended course of action.

7. For the CFPM, I request that you take whatever follow-up action is necessary, as soon as you can.

(signed W. Leach)
LGen

__P.S.__ The original copy of this handwritten memo is for the CFPM.
I have retained a copy for myself.
No other copies have been done.

Appendix V:
CFNIS press release,
October 26, 1998

NEWS ROOM

PRESS HOME | SEARCH | HELP | FRANÇAIS | COMMENTS

CFNIS finds no evidence to support allegations against Colonel Labbé and Lieutenant-General Leach

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26 October 1998
CFPM-98.044

OTTAWA –The Canadian Forces National Investigation Service (CFNIS) has determined that there is no evidence to support allegations of sexual misconduct made against Col. Serge Labbé, and that there is insufficient evidence to support allegations of inaction against Lt.-Gen. Bill Leach. The CFNIS has therefore concluded that no criminal or service offences were committed. No charges will be laid against either Colonel Labbé or Lieutenant-General Leach.

The allegations were put forward in a July 1996 memorandum addressed to then Major-General Leach, deputy commander of the army. The media was given a copy of this memorandum on June 17, 1998.

In addition to finding insufficient evidence against Lieutenant-General Leach, the CFNIS investigating team found no evidence to support the idea that any other individual within the chain of command had been made aware of the memorandum, or the information contained in it.

During the investigation, the investigating team conducted numerous interviews with military members and civilians. An RCMP inspector, who is currently seconded to the CFNIS and responsible for one of its investigative sections, supervised this investigation.

-30-

Contact person:
Captain Alain Bissonnette,
Canadian Forces Provost Marshal Spokesperson
(613) 945-7298
(613) 780-0331 (pager)

Appendix VI: Index of responses from subjects of complaint

1. Lieutenant-General Leach
2. General Baril
3. Master Warrant Officer MacFarlane
4. Commander Moore
5. Lieutenant-Colonel Cloutier
6. Brigadier-General Samson
7. Lieutenant-Colonel Pellicano
8. Lieutenant-Commander LaViolette
9. Lieutenant-Colonel Robertson
10. Major-General Penney
11. Brigadier-General Mathieu
12. Colonel Cooper
13. Captain Poulin

National Defence and
Canadian Forces Ombudsman
Carriageway Building
55 Murray St, Suite 500
Ottawa, ON, K1N 5M3

Dear Mr Marin

I am in receipt of your letter of 12 February, 2001 and your letter of 5 March, 2001 covering the Interim Report as it pertains to me.

I have nothing to say or add at this point. I appreciate the opportunity to review this part of your work to date.

Yours truly,

Bill Leach.

PROTECTED B

Chief of the Defence Staff Chef d'état-major de la Défense

National Defence
Headquarters
Ottawa, Ontario
K1A 0K2

Quartier général de
la Défense nationale
Ottawa (Ontario)
K1A 0K2

16 March 2001

Mr. André Marin
Ombudsman for National Defence
and the Canadian Forces
Carriageway Building
55 Murray Street, Suite 500
Ottawa ON K1N 5M3

Dear ~~Mr. Marin~~ André,

I acknowledge receipt of your Interim Report into the complaints of Captain Bruce Poulin dated 5 March 2001, and thank you for giving me the opportunity to provide comment before producing your final report. As you are aware, I have provided a copy of your Report to the Vice Chief of the Defence Staff (VCDS), who with your consent forwarded it to the Canadian Forces Provost Marshal (CFPM). Recommendations 5 to 9 inclusive, of the Interim Report fall within the purview of the CFPM. Out of deference to the Accountability Framework of that office, I have not dealt with these recommendations in this reply. I have no doubt you will receive comments on them directly from the CFPM. The remaining recommendations are addressed, in turn, below.

Recommendation 1. *Senior command within National Defence Headquarters at all levels should be required to follow a procedure whereby all written memoranda which raise issues and concerns about the Canadian Forces leadership or which contain allegations of misconduct against Canadian Forces members are uniformly and routinely logged and monitored to ensure a response by the appropriate level of the chain of command.*

Implicit in this recommendation is the requirement to establish a new and separate procedure to deal with memoranda that raise leadership "issues and concerns" or allegations of misconduct. From a practical perspective, the term "issues and concerns" lacks sufficient clarity for consistent application in policy – the concern being that such a broad categorization would result in widely varying interpretation and unequal application.

In any event, generally accepted office record management practices and procedures, including a system for the logging and tracking of correspondence, are already well established for all staff, including the senior command within National Defence Headquarters. Had these practices and procedures been correctly observed, the documents in question would have been properly logged.

While I agree that the proper document handling procedures were not observed in this case, the Interim Report only highlights problems and failings related to the logging and recording of correspondence within the office of the Deputy Commander of Land Forces at LFC Headquarters at St Hubert, Quebec in 1996. There is nothing in the Report to suggest that this particular aspect of what you aptly term "maladministration"[1] is systemic or widespread within the "senior command" at National Defence Headquarters.

Although I am not convinced that the existing procedures in this area are inadequate, the importance of ensuring that service authorities remain vigilant with respect to the maintenance of accurate and complete correspondence records system is indisputable. To that end, I have directed that current guidance be reviewed and that direction with respect to the management of recorded information be strengthened, where appropriate.

Recommendation 2. *This procedure should provide that all Canadian Forces members have a right to receive a written acknowledgement of their complaint and a written response detailing any action taken in response, including the results of any investigation (wherever appropriate).*

I agree in principle with this recommendation. The recommendation's underlying objective of ensuring that all CF members receive a formal acknowledgement of written complaints submitted by them is supported and has been included in the CF's primary complaint mechanisms. For example, the requirement to provide letters of response is a feature of both the new CF Grievance and Harassment policies, and military police policies require that victims be advised of the status and outcome of investigations. Additionally, formal acknowledgement and closure are features of virtually all mechanisms of oversight. That having been said, I believe there is merit in examining this issue further and I will undertake to do so.

Recommendation 3. *There should also be provision that if no written response or follow up is logged that the matter is brought forward immediately to the attention of the Chief of the Defence Staff for response.*

The intent of this recommendation is to ensure that a system of checks and balances exists to provide recourse to a complainant where, through neglect or intentional disregard, a letter of complainant goes unanswered. This is laudable. However, the recommendation essentially proposes to by-pass the Chain of Command to achieve this and, as such, cannot be supported.

As in all militaries of the world, an effective Chain of Command is fundamental to the command and control of the Canadian Forces. In resolving issues and complaints, the

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[1] See Line 555 on p. 18 of the Interim Report.

Chain of Command must be engaged and must be part of the solution. If there is a breakdown in trust in that Chain, this breakdown must be addressed and corrected, rather than by-passed. Failure to do so would jeopardize the ability of leaders at all levels to command effectively, and would have disastrous consequences in operations.

There are already numerous mechanisms, both internal and external, that are available for a Canadian Forces complainant to seek remedy or to challenge the exercise of an authority's discretion. A service member is always permitted to request an audience with his commanding officer, as a "custom of the service". Any member who believes that their complaint has not been dealt with, or dealt with adequately, may refer the complaint to an appropriate authority higher in the chain of command – normally the next superior officer in the reporting chain. In particular, the grievance process provided for by the NDA and QR&Os specifically permits a member to make an oral complaint to the Commanding Officer prior to submitting a grievance.

In addition, other oversight mechanisms provide more that sufficient formal, alternative avenues of recourse, including the new streamlined redress of grievance and harassment processes. Independent oversight mechanisms include the Military Police Complaints Commission and the Office of the Ombudsman. There are also informal mechanisms, such as the Executive Director Conflict Management, who provides dispute resolution services.

While not designed expressly for the CF, there are also several external oversight mechanisms that perform an ombudsman-like function in specific subject matter areas such as the Office of the Privacy Commissioner, the Office of the Information Commissioner, the Office of the Official Languages Commissioner and the Canadian Human Rights Commission.

I am satisfied that the processes now in place provide sufficient institutional access and review.

Recommendation 4. *General Baril should, as the commander of the Canadian Forces, issue an acknowledgement of failure and regret on behalf of the chain of command to Captain Poulin and confirm to him personally the Canadian Forces' commitment to implementing procedures to ensure that when members bring forward issues and concerns to the chain of command that they will be responded to in all cases.*

Regarding this recommendation, I am gratified to note that your investigation concluded that there was no harassment of Capt Poulin by his immediate superiors and colleagues. I deeply regret the breakdown in communications, and the fact that both he and his family suffered undue stress and anxiety as a result. In my view, it is imperative that CF members have the opportunity to bring forth any concern that may affect their well-being in the workplace, and that the processes and procedures exist to allow them a fair opportunity to do so.

In that light, I accept your recommendation and will be writing personally to Capt Poulin to express my regrets that the chain of command was not able to resolve his concerns early on and acknowledging the impact the breakdown in communications has had on him and his family, and on his perception of the CF leadership.

Recommendation 5. *The Canadian Forces National Investigation Service should consult with Captain Poulin and, should he wish to pursue the matter, the Canadian Forces National Investigation Service should conduct an investigation into Captain Poulin's allegations that his personal information was leaked to the media.*

Recommendation 6. *The Deputy Provost Marshal Professional Standards should re-issue the official letter dismissing Captain Poulin's military police complaints, removing the reference to "vexatious".*

Recommendation 7. *The Chief of the Defence Staff should ensure appropriate directives are put into place to prevent actions by Canadian Forces members which constitute or which may be perceived by a reasonable person to constitute attempts to influence the course of Canadian Forces National Investigation Service investigations outside of the normal investigative process and the Canadian Forces Provost Marshal should be required to report all such actions in writing to the Chief of the Defence Staff who will, in turn, cause appropriate action to be taken and will inform the Canadian Forces Provost Marshal.*

Recommendation 8. *The Chief of the Defence Staff issues the appropriate directives to ensure that where incidents are referred to the Canadian Forces Provost Marshal for investigation that the referral comes from persons within the chain of command who are not identified as potential subjects of any allegations to be investigated.*

Recommendation 9. *The Canadian Forces National Investigation Service should issue a further press release to correct the original media release and to clearly inform the Canadian public of the complete results of its investigation into the allegations against Lieutenant-General Leach including the fact that it did uncover evidence that individuals within the Canadian Forces chain of command had seen the memorandum submitted by Captain Poulin and were aware of its contents and that the Canadian Force National Investigation Service report recommended in its conclusions that the issue should be reviewed from an administrative perspective by the chain of command.*

As indicated above, comments with respect to Recommendations 5 to 9 inclusive of the Interim Report will be submitted directly from the CFPM, and therefore I have not dealt with those Recommendations in this reply. While I recognize that Recommendations 7 and 8 are directed to the CDS, the principles of the institutional independence of the office of the CFPM contained in her Accountability Framework must, as a matter of public policy, be supported and I therefore feel obligated to allow the CFPM to respond to you directly.

Recommendation 10. *The Canadian Forces should issue an ex gratia payment to Captain Poulin for the amount he expended on legal representation in order to obtain advice and to attempt to resolve the issue surrounding the critical comments made by Lieutenant-Colonel Robertson about him in his letter to Colonel Labbé.*

Your recommendation makes eminent sense and I will invite Capt Poulin to bring forward any such request for payment.

Recommendation 11. *The Chief of the Defence Staff should direct that a review be conducted to confirm the administrative action taken against Lieutenant-Colonel Robertson and direct that the necessary steps be taken to document such action.*

This recommendation is accepted. Accordingly, I have directed the Chief of the Land Staff to conduct a review confirming the administrative action taken against LCol Robertson and to take the necessary steps to document that action.

As a final matter, I am given to understand that a number of individual responses to your Interim Report are anticipated and that this may result in changes to the report's recommendations. Should this be the case, I would appreciate the opportunity to comment on any amended recommendations prior to your finalizing the Report.

Sincerely,

Baril

J.M.G. Baril
General

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PROTECTED B

2120-4-14 (CFPM)

Canadian Forces Provost Marshal Office
Resource Management
National Defence Headquarters
Major-General R. Pearkes Building
Ottawa, Ontario. K1A 0K2

14 March 2001

Distribution List

OMBUDSMAN INTERIM REPORT
COMPLAINT BY CAPTAIN BRUCE POULIN

References: A. Ombudsman Interim Report dated 5 March 2001
B. Ombudsman Letter dated 12 February 2001

As requested in the covering letter of Reference A, these are the observations and comments forwarded for your perusal and consideration.

Based on the information presented, the following comments are offered:

- During the short meeting held with Captain Poulin (on or around 3 July 1998), he had initially requested to speak to then Lieutenant Commander Moore, who was in a meeting. I met with Captain Poulin in my office, where I did acknowledge receipt of the video cassette, written note and information supplied. I advised Captain Poulin that I would forward the information to then Lieutenant Commander Moore for his review and action as required. The further comments supplied by Captain Poulin, I can not recall ever hearing or making comment on in return. The video cassette, written note and information supplied by Captain Poulin was passed to then Lieutenant Commander Moore;

- Captain Garrick and myself were tasked to investigate the allegations of inappropriate behaviour by Colonel Labbé towards an unidentified civilian female at a Canadian Forces Base Kingston Mess. The document at Reference A, makes no mention of this investigation, which I made clear to the Ombudsman investigators, was the only aspect of the varied allegations against Colonel Labbé, that I was involved with;

- I was not tasked to investigate whether Colonel Labbé was receiving legal representation and advice at public expense;

- In the interview with the Ombudsman investigators, I recall relating that I did not know if there was an investigation completed as to who bore the costs of Colonel Labbé's lawyer, Mr. Hendin. If they did ask if I was aware of an investigation, I would have replied in the negative, as I did not know either way; and

> As I was not involved in the interview conducted by Captain Garrick and then Sergeant Cavasin, with Colonel Labbé, I can not comment on the validity of the information supplied.

Based on the information I have provided above, the "Assessment" that has been reached in this matter would seem to be inaccurate, as it was not my decision to investigate or cause an investigation resultant of Captain Poulin's queries about Colonel Labbé's receipt of legal representation at crown expense. Upon Capt Poulin delivering the video cassette, written note and information into my hands, the items were then passed to then Lieutenant Commander Moore for consideration and action as deemed necessary. That is where my involvement with this information ceased.

If you require further information, please contact me at the number listed below.

P. MacFarlane
Master Warrant Officer
Deputy Provost Marshal
Resource Management
613-945-7279

DISTRIBUTION LIST

André Marin - Ombudsman
CDS
CFPM

Memorandum

28 March 2001

Distribution List

REPONSE TO INTERIM REPORT

Ref: Interim Report: Complaint by Capt Poulin 5 March 2001

1. I have received and reviewed the portion of your interim report observing on my actions. I appreciate the opportunity to review it and provide comment before it becomes final. In addition, please pass on my appreciation to your investigator, Bob Howard, for his assistance in extending the deadline for my response until 28 March 2001.

2. Please note that I have included the CDS and the CFPM on the distribution list for my reply. The CDS has been included because I have been told that he received a copy of your interim report. This report contains information that I believe is not entirely accurate therefore I felt it was important that he see my reply clarifying this information. I note that the portion of your interim report that pertains to me focuses exclusively on police investigation issues and police conduct. As the CFPM is the owner of these processes I felt that she should see these issues and my response to them.

3. With respect to allegation 6, paragraph 1990, on page 71:

"Failure to pursue Canadian Forces National Investigation Service investigation into complaint about leaked personal information"

I do not concur with your assessment that my response in this instance was not adequate to address the seriousness of the allegations brought forward by Capt Poulin. Your report further states that allegations that medical or personal information on the part of Canadian Forces members has been leaked to the public should be treated as serious and investigated wherever possible. The mandate of the CFNIS is limited to the investigation of serious and sensitive criminal or service "offences". As such, any complaints of leaking of information, as described above, must be examined with this is mind.

4. During his initial CFNIS interview on 22 Jun 98 Capt Poulin stated that he arrived at his house and found voice mail messages from two journalists that said anonymous sources at NDHQ had told them that he had been involved in a traffic accident thirteen years ago and was mentally unstable. There were two prominent issues that contributed to my decision not to investigate this alleged information leak. First of all, it is far from clear that Capt Poulin was making a complaint that he felt should be investigated by the CFNIS. During the course of my many contacts with Capt Poulin I continually reminded

him of the mandate of the CFNIS. He talked about many issues, some of which were within the CFNIS mandate, and many which were not. On several issues he was clear that he felt there was an offence which required investigation. With respect to the leaking of information he did not state directly or indirectly that he felt this should be investigated by the CFNIS. His discussion of this issue during the interview centered on the following:

a. The information that was given to journalists was false and, as such, was innuendo;

b. He felt the purpose of this innuendo was "character assassination"; and

c. The only way to deal with innuendo is straight on, so when a camera crew came to his house he let them in and gave them a copy of his medical records to clearly show that there was never any question of mental instability and that the information they had was false.

5. My view of the information provided to me by Capt Poulin was that false information was provided to the media; he considered the information to be innuendo; and he dealt with it in a manner that he felt was appropriate. He left his comments at that and did not provide any further information that would indicate that he felt this was a complaint that was still outstanding.

6. The second and most important issue is that I had no reason to believe, from the information provided, that an offence had occurred. In fact, I had every reason to believe that no offence had occurred. There are two issues here: the medical information (mental instability) and the traffic accident.

Medical information

Personal information

8. This leaves the traffic accident itself. In his complaint to you, Capt Poulin refers to the CFNIS investigation into the leak of medical documents on Pte (ret'd) Ann Margaret Dickey. It is interesting to note that in this case the CFNIS, during their investigation and subsequent legal consultation, determined that for the leaking of information to constitute an offence the information must be unpublished or classified.

While this may be true, the fact the information was in the public domain does preclude the laying of charges. Although, once again I believe there are ethical issues here, there is not an offence that falls into the mandate of the CFNIS.

9. The decision not to investigate can be summarized as: there was no complaint and there was no offence. If Capt Poulin had been as clear to the CFNIS as he was to your investigators that he felt an offence had taken place then a clear explanation as to why this incident did not fall into our mandate would have been provided to him. He was quite clear; however, that he felt the information was innuendo and he dealt with it. My perception of this was that he felt the situation was finished.

10. Based on this information:

I request that your assessment be amended to reflect that you are satisfied that my response in this instance was adequate considering that Capt Poulin was not clear that he had a complaint warranting investigation and that the actions he described did not constitute an offence falling into the mandate of the CFNIS.

11. I have maintained from the beginning that this situation does raise some ethical or administrative concerns that could warrant further scrutiny. I note that thus far your office has examined my conduct in this situation but, to my knowledge, has not investigated the ethical and administrative concerns associated with the passing of erroneous information about Capt Poulin to journalists. I recommend that:

The office of the Ombudsman conduct a full investigation into the allegations of the release of erroneous information with the intent to tarnish the reputation of Capt Poulin.

12. At the beginning of my interview I raised the concern to your investigators that the allegations made against me were all couched in terms of service or criminal offences which, as I understand, are not part of the Ombudsman mandate. I was not provided a

clear answer as to why this investigation was conducted by the Office of the Ombudsman.

I request clarification as to the role of the Ombudsman in investigating criminal or service offence activity and why in this circumstance these allegations against me were investigated by your staff.

13. I note from your interim report that your investigators examined my actions in the context of police conduct and effective investigations. These items fall under the mandate of the Military Police Complaints Commission (MPCC). I also note that your mandate states that your office will not pursue any complaint where the complainant has not first availed himself/herself of the MPCC (among others). In this particular case these allegations were investigated by the Deputy Provost Marshal Professional Standards who dismissed them. They were then investigated by your staff. It would seem from your mandate that once a complainant avails himself/herself of the MPCC you could then re-investigate police conduct issues. This issue is not clear:

I request clarification as to the role of the Ombudsman with respect to the investigation of police conduct issues. Is the MPCC subordinate to the Ombudsman?

14. I would like to express that I fully support the establishment and role of your office. It is a clear message to the members of the Canadian Forces that there is a safety mechanism to ensure that their complaints receive proper review when all else fails. I am also supportive of the need for the actions of those in authority, myself included, to be open, transparent and subject to scrutiny. The comments I have made are to ensure that the facts of this case are fairly represented, that allegations are properly investigated by those with the mandate to do so and that clarifications are made concerning your role and how it relates to the MPCC so that I may better understand and support the system.

S. Moore

S. Moore
Cdr
DPM NIS
945-7254

Distribution List

Action

Ombudsman

Information

CDS
CFPM

12 March 2001

Mr. A. Marin
DND / CF Ombudsman
55 Murray St, Suite 500
Ottawa, ON K1N 5M3

Interim Report: Complaint by Capt B. Poulin March 5, 2001

1. Thank you for providing me the opportunity to comment, on the portion of your interim report that pertains to me, and that addresses Capt Poulin's complaints. First, please note that I now work for the Director General Intelligence vice the Director Joint Force Capabilities.

2. Report Section 2075 - 2080. Contrary to your report, I was neither informed of the content, nor provided a copy of, the allegations made by Capt Poulin against me on 21 September 2000. During the 21 September 2000 phone conversation initiated by your office to me in Sarajevo, Bosnia, I was asked if copies of the complaints could be faxed to me so I could provide comments via phone or Fax from Sarajevo. I declined the opportunity to make any comments until I returned to Canada for I needed to review the files held in my former office. Copies of the allegations were, therefore, not provided to me until 5 December 2000; more then 17 months after your office received them.

3. As I stressed when interviewed by your investigators, I again must stress that Capt Poulin's complaints against me relate directly to the Military Police Complaint process. Your report does not mention that the Military Police Complaint Commission (MPCC), established under Bill C-25 and the National Defence Act Section 250, is the sole authority to deal with such issues. When interviewed by your investigators they were unaware of your (their) lack of mandate in that area. I had to explain to them that since the MPCC was not yet constituted when Capt Poulin made his complaints, the MPCC likely could not deal with the issue. It is essential that your final report indicate why you believe you had authority, what were the compelling circumstances that warranted such investigation, and from whom did you seek authority to investigate that portion of Capt Poulin's complaints, for since December 1999 the mandate is solely within the realm of the MPCC.

4. Report Section 2410 to 2430. In this section of your report you provided two dictionary (Merriam-Webster and Oxford) definitions for the term 'vexatious'. You also quoted the definition, which I used and that had been approved in 1998 by the Steering Committee overseeing the implementation of the Reports to the Minister of National Defence on critical changes to DND/CF including the Military Police. The Chief of Defence Staff (CDS) chaired the Steering Committee. Please note the Steering Committee approved the CF definition of vexatious as well as the Interim Policy on

Internal Affairs Investigations and Complaints about or by Military Police, issued on 13 October 1998.

5. Had your investigators inquired they would have discovered that when the above policy was being researched the two dictionary definitions you quoted were also reviewed. It was determined that the dictionary definitions of vexatious were subjective and not measurable, thus needing further refinement. Eventually, the definition used by the Royal Canadian Mounted Police for their public complaint process, was adopted and approved by the Steering Committee. The approved CF definition of vexatious stated "… a complaint that is one of a number of unsubstantiated complaints from the same person, all of which share a common theme".

6. As per your report section 2380 that states, "It should be noted that Captain Poulin was not an unsophisticated complainant and clearly had detailed knowledge of the matters…", I too concluded that Capt Poulin was sufficiently knowledgeable to articulate against whom, and what, his complaints were about. After having been given ample opportunities to clarify his complaints and having declined to do so, I dismissed Capt Poulin's complaints and classified them as vexatious for the circumstances satisfied the measurable test of the approved CF policy and definition:

a. Capt Poulin had made a number of complaints (5);
b. Capt Poulin made four complaints on 18 November and a fifth on 24 November 1998:
c. although likely very knowledgeable about the issues, Capt Poulin had declined to substantiate his complaints;
d. by Capt Poulin refusing to clarify his complaints, the subjects of the complaints were now likely to become 'victims';
e. all complaints were made by the same individual;
f. the complaints shared a common theme; and
g. Capt Poulin's 24 November 1998 complaint was made after I acknowledged receipt of the four 18 November 1998 complaints, and after I informed Capt Poulin that his complaints had been forwarded to the Acting CDS for actions. In short, Capt Poulin's complaint against me was for strictly adhering and enforcing the approved CF policy in the handling of complaints against Military Police members.

When viewed as a whole and with objectivity, it is difficult not to conclude that Capt Poulin's complaints lacked sufficient ground and served to annoy and cause worry thus also meeting the subjective dictionary definitions of vexatious. I strictly adhered to and enforced the then approved CF policy dealing with the Military Police Complaint process, therefore, your recommendation that the Deputy Provost Marshal Professional Standards (DPM PS) re-issue the official letter dismissing Captain Poulin's military police complaints, removing the reference to "vexatious" is unjustified and inappropriate.

7. Your recommendation to issue a revised letter to Capt Poulin impacts directly on the Office of the Canadian Forces Provost Marshal (CFPM). I find it troublesome that

you have not found it appropriate to afford the CFPM the opportunity to comment on your recommendation. This indicates that the Office of the Ombudsman lacks transparency and accountability. In light of my concern I will be forwarding a copy of my letter to both the CDS and the CFPM.

8. I regret to say that not only is your interim report inaccurate, but also that the investigation (for the portion pertaining to me) was superficial, incomplete and insensitive. Your investigators were unaware of the limitations of your (their) mandate when dealing with issues relating to the Military Police Complaint process. Moreover, the investigators had not researched nor obtained the relevant information and documents relating to Capt Poulin's complaints (and referred to in this portion of your report) that held by the DPM PS (the Section responsible for complaints against MP) until I suggested to them it may be advisable to do so. Your investigators had not and did not intend to interview the RCMP Sergeant who dealt with Capt Poulin's complaints until I recommended it might be appropriate to do so. It appears the investigators and your offices were, and perhaps still are, unaware of the CF approved definition of vexatious and its background, yet you make an unjustified and inappropriate recommendation about it.

9. Finally, I find it intolerable for your office to phone CF members in an operational theatre such as Bosnia and to request them to comment, by phone or Fax, about a complaint relating to issues that are nearly two years old. It is appalling for your office to make such request knowing, or ought to have known, that CF members in such conditions are unable to research properly the issues. I find it deplorable and insensitive that the Ombudsman's office would take such steps knowing, or ought to have known, the stressful conditions and environment that these CF members are working under and yet, to add to their stress through such unwarranted phone calls.

10. The portion of your report that pertains to me raises unquestionable doubt about the thoroughness of your investigation, the efficiency, partiality, transparency and accountability of your office. I am worried that the portion of your report dealing with me may be but a sample of a poor investigation and an equally poor report. It is most evident that the Ombudsman's office requires significant improvement in efficiency, transparency and accountability. I intend to pursue these issues once you release your final report.

P. Cloutier
Lieutenant Colonel

Cc:
Chief of Defence Staff
Canadian Forces Provost Marshal

Mr. Andre Marin
Ombudsman
National Defence and Canadian Forces
55 Murray St, Suite 500
Ottawa, ON
K1N 5M3

14 March 2001

INTRIM REPORT: COMPLAINT
BY CAPTAIN BRUCE POULIN

Reference: Ombudsman Draft Report, March 5, 2001

1. The possibility of providing comments to the office of the Ombudsman as they pertain to the allegations made by Captain Poulin is appreciated.

2. Remarks specific to each area are detailed below.

   a. General.

      1) The copy of the draft was correctly sent to the office of the J2/Director General Intelligence, however it is important that the allegations not be connected with this office. The allegations are associated to my tenure as CFPM and to an incident in 1998.

      2) The covering letter signed by Mr Marin is unclear for it implies that all of the items in the Draft Report are forwarded for review and comments. It is important to emphasize that since the undersigned is no longer the CFPM it would be improper to comment on issues that rest with that office. This lack of clarity, however, does cause some concern given the high standard that the Ombudsman office is demanding of others. .

   b. 1ST Allegation. From a personal perspective, I was very comfortable that there was no hidden intent or personal agenda behind LGen Leach's memorandum. It was also very clear that he wanted to take the high morale ground as it dealt with the allegations related to him.

   c. 2nd Allegation. No Comment

   d. 3rd Allegation. This third allegation especially the assessment portion is the cause of much personal concern.

      1) Page 102, line 2848. There is a phrase in quotations but no indication to whom this quote is attributed. It certainly is not mine. The words "within the chain of command" are the words used not "in the Canadian Forces chain of command".

2) The assessment argues that the press release was misleading by indicating that no one in the chain of command knew of the memorandum in question. There was nothing misleading in the news release. The news release and the portion dealing with the chain of command is quite clear in its scope. The paragraph in question focused on LGen Leach and his chain of command, which was at the time the commander of the Army and ultimately the CDS. No one else was the focus of that particular paragraph. The news release was a fair and accurate comment.

3) It is important to stress that the press release did not infringe on the rights of any individual concerned and did not violate any act of parliament. Further great pains were taken not to refer to Capt Poulin in the news release to ensure that he did not view the findings as prodding. It was also my understanding that Capt Poulin had been briefed on the findings of the investigation long before the news release was distributed.

4) There appears to be an argument as it pertains to the words "the chain of command". The interpretation used by myself meant everyone above the rank of those involved. For instance where Capt Poulin is concerned it would be his superiors and above and the same for LGen Leach. In this report the Ombudsman also uses the words "within the chain of command." It is worth reviewing the recommendation that resulted from the first allegation (lines 2706 through to 2711). How is the term "within the chain of command" to be interpreted here? At lines 2854 and 2858 of the 3rd allegation the ombudsman appears to interpret the term to mean everyone up and down the chain of command. Given this latter interpretation is the intent here that a Cpl could do the referral to the CFPM when a CWO is involved in a situation? A Col could get a referral from a Capt? Or a Pte could do the referral for a B Gen, L Col, or MWO? Or is the intent that someone senior to the individual involved should do the referral? If it were a LGen, should it be the CDS who would do the referral or the LGen's staff officer who is a Capt? As an aside, are there recommendations in other portion of the draft report that use the terms "the chain of command" and how should each use of the term be interpreted?

5) The motivating factor behind the words "this issue should be reviewed from an administrative perspective by the chain of command" was based on the fact that a search of the files did not reveal the memos whereabouts and the correspondence logs did not reflect that the memo was received. The investigators determined that there may be an administrative (information management) problem.

6) The words "this issue should be reviewed from an administrative perspective by the chain of command." are important to note. The "chain of command" here was considered to be LGen's superior. The report was sent to CDS for action. It was not sent to LGen Leach's subordinates as it concerns an administrative review. There was no dual meaning or interpretation of the term. The use of the term for the news release was the same one used for the report. A verification of the distribution list to NCN 510-001-98, 23 October 1998 will confirm the distribution of the report and support the above facts. Ultimately, the term used was a legitimate and honest interpretation of what I believed.

7) Line 2865 and 2866 states "in the totality of the evidence". I would like to know exactly what evidence is being referred to here. Because the ombudsman does not agree with my interpretation of the words used in the press release does not mean that there was malicious intent on my part as it pertains to the news release. Basically it is a different interpretation of the facts.

8) Of concern are the lines 2868 to 2875. The ombudsman has personalized this particular allegation against myself. This was not done in the assessment of the other allegations and is not in sync with the flow of this portion of the report. It begs the question of why is the Ombudsman endeavouring to tarnish my reputation. Is there a bias against me personally or are there issues left over from other cases? Ultimately, this portion of the report not only tarnishes my reputation but also makes me a victim. As a victim I will have no option but to seek redress for this situation if it is in the final report.

3. The review of this portion of the interim report has reminded me of the Ombudsman's Q&A session at the National Press Club held on 21 June 2000 that has been of concern to me for some time. The Ombudsman was asked a question about the Sharpe Report. In his answer the Ombudsman stated that "Le grand prévôt n'est pas d'accord avec ces conclusions-là et puis elle a référé le dossier à la commission qui se reporte à elle et puis il va falloir voir ce que la commission a à dire.[1]" The National Defence Act is very clear that the MPCC reports to parliament, provides a report to the CFPM as it pertains to certain cases but when the CFPM is involved the MPCC provides a report to the CDS. The latter was the situation in the case being discussed. Ultimately, the MPCC does not report to the CFPM, they are independent. Were the comments made at the National Press Club meant to prod or mislead, were they reasonably accurate, or even a fair comment? Is this all a matter of interpretation? After reading the 3rd

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[1] DGPA TRANSCRIPTS - DOCUMENTATION DGAP
TOPIC/SUJET: Andre Marin - National Press Club - Qs & As AGENCY/AGENCE: Media Q
DATE-TIME/DATE-HEURE: 21 13h00 June 2000 REFERENCE: 00062104

allegation and the assessment, questions about the motive behind the ombudsman's words (in quotes as outlined above) have surfaced in my mind.

4. In the final analysis the Ombudsman cannot say that my interpretation of the words "chain of command" and the use of these is wrong. He can disagree with my interpretation, however to imply that my use of the term was malicious, ill-willed, spiteful, used with the purposeful intent of prodding Capt Poulin, or used to mislead the public is unacceptable and inaccurate. The comment was fair given my interpretation of the words. How can the Ombudsman base his findings on the totality of the evidence when the evidence is not clear and the issues he has brought forward have been refuted by the aforementioned comments. The assessment of the 3rd allegation is not valid and should be amended.

5. It is my understanding that the CDS has received a copy of the draft report, therefore out of courtesy I am forwarding a copy of this letter to his office. I await a copy of your final report before deciding how or indeed if redress should be sought.

P. M. Samson
Brigadier-General

7 March 2001

Personal Delivery

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INTERIM REPORT -
COMPLAINT BY CAPTAIN POULIN

References: A. Your letter 12 February 2001
B. Your letter 5 March 2001

Thank you for giving me the opportunity to review the portion of your interim report concerning your investigation of the allegations made by Captain Poulin in regard to me.

It is clear that Captain Poulin perceives that bias exists in his mind, due to the level of my rank and marital status, in the administrative coordination of his application for redress of grievance. However, the fact of the matter is that his application for redress of grievance was administered by the staff of the DCFGA office in a fair, just, and equitable manner. DCFGA does not have the authority to render decisions on grievances nor to deny redress, grant redress, or grant partial redress. DCFGA is responsible to present to the CDS, for the CDS' decision, complete grievance files for adjudication.

Since Captain Poulin's application for redress of grievance did not articulate the precise redress sought, it could not be staffed further by DCFGA for consideration by subject matter experts and adjudication by the CDS. In view of Captain Poulin's decision to not re-submit his application for redress of grievance specifying the remedy sought, no subsequent administrative action could be taken by DCFGA in accordance with the usual standing operating procedures.

I reiterate my assertion that my wife, who is employed in DGPA, has had absolutely no impact whatsoever on the outcome of Captain Poulin's grievance documentation that he submitted to DCFGA. All of the grievances referred to DCFGA for staffing on behalf of the CDS were handled in a meticulously professional manner. I have total confidence in Major Morrissey's professional ethics of having dealt with Captain Poulin's grievance with the utmost care and diligence.

Due to the fact that Captain Poulin chose not to re-submit his application for redress of grievance with a clear redress sought for further consideration, it is indeed a moot point that he perceives a conflict of interest with respect to my rank and marital status. In reality, the investigation of his grievance was never totally coordinated by DCFGA - and, thus, not adjudicated by the CDS - because of Captain Poulin's decision to refrain from re-submitting his grievance as suggested by Major Morrissey.

In conclusion, I fully agree with your investigators' balanced assessment of Captain Poulin's submission to your office.

Yours sincerely,

P. Pellicano

Pierre Pellicano

12 March 2001

M. André Marin
Ombudsman
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RESPONSE TO THE INTERIM REPORT: COMPLAINT BY CAPTAIN BRUCE POULIN

References: A. Interim Report on Allegations Against the Canadian Forces. Portion pertaining to Lieutenant-Commander Denise LaViolette, Director General Public Affairs. 5 March, 2001.
B. Phone features manual
C. Photos (2) of Capt Poulin's desk phone and of the voice mail phone located in the media liaison office.
D. User guide for Capt Poulin's desk phone.

1. I received ref. A on 5 Mar 2001, and although I am satisfied with the overall assessments of the allegations against me, I would like to provide further information on allegations 3 and 10.

2. Allegation 3: ***Checking phone calls received within the Media Liaison Office.***

3. In the assessment portion of allegation 3 (3430) you refer to "*Capt Poulin's telephone*" while his statement (3395) refers to the "*Common phone (996-2353/996-2354)*". I would like to clarify that we are in fact speaking of two different phones, the desk phone that was on Capt Poulin's desk and the voice mail phone (media lines) that was located on Capt Morissette`s desk.

4. The report states that "*More probable, Lieutenant-Commander LaViolette elected to check Captain Poulin's telephone call display and verify the information against the log…*" It would have been impossible for me to check the calls made to Capt Poulin's desk phone as there is no such function on his or any of the other media liaison desk phones. I have enclosed a photograph of Capt Poulin's phone as well as the user guide for that particular model of phone. The feature that does exist on the desk phones is a call display which only shows the name and/or phone number of the caller at the time of the call.

5. There is one phone in the MLO (photo enclosed), which was located on Captain Morissette's desk, that has a caller display function and the capability of storing the names and/or phone numbers of previous callers. This phone is related to the media lines (996-2353 /996-2354) and not to a specific desk phone. All personnel had access to this phone. If an individual were to check the incoming calls on this phone it would not be possible to tell who had taken the call.

6. As detailed in my testimony I do not recall the particular event described by Captain Poulin nor do I recall checking the voice mail phone for previous callers. My purpose in responding to this allegation is to request that the text of the report be amended to reflect the fact that we are speaking of two separate phones (Capt Poulin's desk phone and the voice mail phone) and that it would have been impossible for me to check calls made to his desk phone. The specific paragraph I would like amended is on page 125 and numbered 3430/3435.

7. Allegation 10, ***Withholding message from Captain Poulin's wife in relation to a family emergency until meeting to discuss unreported comments to the media was concluded, and false statement in subsequent memorandum relating to this incident.***

8. In the case of allegation 10, I simply would like to reiterate some of my testimony as well as clarify certain statements made by witnesses. The most important fact is that I was not present in the Media Liaison Office when Capt Poulin's wife called. I arrived at work much later than usual due to an appointment outside of the Headquarters building. Upon arriving on the 15th floor, before going to my office, I was told to see my supervisor. I would therefore not have witnessed any members of the media liaison staff looking for Capt Poulin. I was somewhat upset following my meeting with my supervisor, as I had been told that media clippings from that day indicated that Capt Poulin had provided a news release to the media. He had not advised his chain of command that this event had occurred.

9. When I entered the MLO I asked about the whereabouts of Capt Poulin and mentioned that I wanted to see him. No one knew where he was and it is at this time that Lt(N) MacKillop advised me that Capt Poulin's wife had called.

10. In designator 3915, M Burbridge stated that *he believed Captain Morissette had taken the call and announced to the office that there was a family emergency.* In designator 3920 he is quoted as saying "*…Lieutenant-Commander LaViolette, when she overheard this asked everyone that when Captain Poulin returned to the office, that he not be told about this message because she needed to see him urgently…that she'd tell him about the message after their conversation.*" In designator 3930, Mr Dickman states that: "*I believe it was Capt Morissette that received the call and he related it over to his co-worker – I don't remember who that was – that when Bruce comes in, tell him to call his wife (because) there was a family emergency….At that point, Lieutenant-Commander Denise LaViolette came out of her office and said, "No, don't give him the message. I want to see him first.*"

11. The sequence of events in these statements can not be accurate, as I was not in the media liaison office when Capt Poulin's wife called. Furthermore, as mentioned in paragraph 8 and confirmed in both Lt(N) MacKillop's and Capt Morissette's testimony, it was Lt(N) MacKillop who advised me of the call. I was not coming out of my office but rather entering the media liaison office when I had the discussion with Lt(N) MacKillop. I clearly remember both M Burbridge and M Dickman being present in the office when I came in that morning and they would have heard my discussion with Lt(N) MacKillop and my direction to staff members to have Capt Poulin see me as soon as he returned.

12. I also wish to add that I waited for Captain Poulin for close to one hour, that his wife never called back during that time and that my meeting with Capt Poulin, witnessed by Capt Morissette, lasted less than 10 minutes. Capt Poulin was advised at the end of this meeting that his wife had called. He was therefore able to call his wife within ten minutes of returning to his place of work. A timeframe that I do not find unreasonable.

13. I appreciate the consideration you will give to this letter. In closing, I would like to thank your staff for their sensitivity and thoroughness in dealing with this issue.

Denise LaViolette

D. LaViolette
Lieutenant-Commander

33 Canadian Brigade Group Headquarters
1745 Alta Vista Drive
6th Floor
Ottawa, Ontario K1A 0K6

12 March 2001

Mr. André Marin
Ombudsman
National Defense and Canadian Forces
Carriage Way Building
55 Murray Street,
Suite 500,
Ottawa, ON
K1N 5M3

Interim Report - complaint
Captain B. Poulin

General

1. Further to your letter of 5 March 2001, the following paragraphs constitute my response to your interim report of findings regarding the subject complaint.

Captain Poulin's complaint

2. The essence of Captain Poulin's complaint is that I wrote a official military letter to another senior military officer about him. As you have concluded the letter itself it is as not an official military letter. However, you go on to state that in your view "it is conceivable that Lieutenant Colonel Robertson anticipated that the letter could be used and referred to by Colonel Labbe as a statement of support for him during the ongoing investigation". You then conclude this section by stating " I am not satisfied that Lieutenant Colonel Robertson could not have foreseen that his critical comments against Captain Poulin may be disclosed to other persons beyond Colonel Labbé".

3. By so stating, it is my opinion that you are, by extrapolation, stating that anyone expressing a personal opinion in private correspondence should anticipate or foresee that any such correspondence may be made public - in general, this is not a reasonable deduction, and in this particular case, it is not supported by any factual evidence. I can categorically and unequivocally state it was my intent to express my opinion privately, and that if I had thought, foreseen or anticipated for a moment that the letter would have been made public, I would not have written it as I did. I will state this under oath or take a lie detector test if you wish, if that is what is required in order to disprove your conjecture.

Publication of the letter

4. When I first received notice from the counsel for Captain Poulin, I was shocked that this letter had been disclosed to him. When I contacted Colonel Labbe to determine how this came about, he was equally aghast. He related to me that during the course of the investigation he revealed the contents of the letter to the NIS under an agreement of confidentiality. He did so as I had provided information that clearly stated that I was responsible for having failed to prevent one of the incidents that Col Labbe was accused of having been responsible for, and that I would so testify if called. When asked for a copy of the letter, he further confirmed with the investigators that this would be done on the condition of confidentiality. Indeed, you will see from the letter itself that it has been stamped "confidential". I am taken aback that your investigators have not verified these facts for you with Colonel Labbé or the investigator that interviewed him on this matter. Further, it is my position that, under these circumstances, the release of portions of my letter contravened DND policy and my right to privacy.

My apology

5. In his complaint Captain Poulin stated that my actions were compounded by the fact that I did not write a letter of apology to him until he sought legal counsel. Further, Major General Holmes is quoted " LCol Robertson was directed to write a letter of apology through, I believe, his Brigade Commander". In both instances the statements are incorrect. Upon receiving a letter from Captain Poulin's counsel, I retained legal counsel, and on his advice, did not respond. The legal counsel did so, categorically refuting Captain Poulin's complaint. When portions of my letter were published in the Ottawa citizen and the Esprit de corps, and then aired on TV by Capt Poulin himself, after due consultation and of my own volition, I asked my legal counsel to send an apology to Capt Poulin's counsel as a result of this private correspondence being made public. I am taken aback that your investigators have not verified this sequence of events with Captain Poulin (the dates and postmarks of both our correspondence will speak for themselves), or at the very least, reflected my statements to this effect. With regard to the statements attributed to Major General Holmes , I am completely prepared to be re-interviewed with my Brigade Commander and Major General Holmes, if this is what is required to verify this issue (and am surprised that your investigators did not attempt to verify Major General Holme's statement with my Brigade Commander).

Conclusion

6. Lastly, I infer from your comments, under " administrative action against Lieutenant Colonel Robertson" that I have taken retaliatory action and reprisals against Captain Poulin. This is simply not the case. I have expressed an opinion in private regarding untrue allegations made against another officer in the Canadian Forces. I have that right. I am not in a position to influence any part of Captain Poulin's military life, nor would I do so if I were. My record over the past 25 years clearly supports this statement. Moreover, Captain Poulin would not have been exposed to my personal

opinion had he not requested a copy of my letter and had the Military Police not improperly released it.

A.F. Robertson
Lieutenant Colonel

CONFIDENTIAL

National Defence
National Defence Headquarters
Ottawa, Ontario
K1A 0K2

Défense nationale
Quartier général de la Défense nationale
Ottawa (Ontario)
K1A 0K2

7045-71 (CRS)

6 March 2001

Mr. André Marin
Ombudsman
National Defence and Canadian Forces
Carriageway Building
55 Murray Street
Suite 500
Ottawa, ON K1N 5M3

Dear Mr. Marin,

Thank you for the opportunity to review the portions of interim report concerning complaints against me submitted by Captain Bruce Poulin.

After reviewing the report I find the report to be factual and I have nothing to either add or to question.

Sincerely,

KGPenney

K.G. Penney
Major-General
Chief Review Services

CONFIDENTIAL

Défense nationale National Defence

Director General Health Services/Commander
Canadian Forces Medical Group
1745 Alta Vista Drive
Ottawa ON KIA 0K6

Directeur général – Services de santé/Commandant
Groupe médical des Forces canadiennes
1745 promenade Alta Vista
Ottawa ON KIA 0K6

1170-1 (DGHS)

8 March 2001

Office of the Ombudsman
Carriageway Building
Suite 500, 55 Murray St.
Ottawa, ON K1N 5M3

REVIEW OF INTERIM REPORT – CAPTAIN BRUCE POULIN

References: A. Letter 1170-1(DGHS) dated 15 February 2001
B. Interim Report on Allegations Against the Canadian Forces 5 March 2001(Portion pertaining to BGen Mathieu)

Thank you for providing me with reference B. I have reviewed its contents and have no comment to offer.

L. Mathieu
Brigadier-General
Director General Health Services

Canada

National Defence Défense nationale

National Defence Headquarters
Ottawa, Ontario
K1A 0K2

Quartier général de la Défense nationale
Ottawa (Ontario)
K1A 0K2

2120-20-2-3 (CFPM)

21 March 2001

Mr. A. Marin
DND/CF Ombudsman
55 Murray St, Suite 500
Ottawa, ON K1N 5M3

Dear Mr. André Marin:

A copy of your interim report, dated 5 March 2001, into the complaints of Captain Bruce Poulin was forwarded to me by the Vice Chief of Defence Staff on 13 March 2001. I welcome the opportunity to provide general comments with respect to the scope and content of the interim report and specific observations where it relates to the Canadian Forces National Investigation Service (CFNIS) and military police policies, procedures and the circumstances from which recommendations 5 to 9 have been drawn.

General Comments

After reviewing the draft report, I am concerned with the scope of the inquiries undertaken by your office relating to the conduct of the military police in the performance on their policing functions. As you are aware, Part IV of the *National Defence Act* establishes a mechanism for dealing with conduct complaints against members of the military police. This process, including the Military Police Complaints Commission, was established to ensure a structured, transparent and accountable oversight process that is fair to both the public and the military police. Any investigation conducted outside the established process for dealing with military police complaints causes me great concern.

I recognize that the facts of this case are unique in that the complaints relating to police conduct are incidental to broader allegations of harassment and retaliation. In addition, the military police complaints process was initiated in 1998 and Captain Poulin's complaints were appropriately dismissed following reasonable efforts by the military police to clarify Captain Poulin's concerns; a decision that you found not to have been "unreasonable in these circumstances".

The unique circumstances of this case have resulted in your office inquiring into the conduct of military police in the performance of their policing function, something for which I have found no express authorization for your office to do in law, Ministerial Directives, or the relevant 1999 correspondence between your office and the Chief of Review Services. I am sure you will appreciate that under normal circumstances the more appropriate mechanism for considering and addressing the allegations against Brigadier-General Samson, Lieutenant-Colonel Cloutier, Commander Moore, Captain Garrick, and Master Warrant Officer MacFarlane would have been the military police complaints process.

I understand that individual military police members have been asked by your office to make comments with respect to portions of the interim report relating to them. Although it is not normally within the purview of individual members to observe on either the specific operations of the CFNIS or Military Police policies and procedures, I expect that these individuals will make comments with a view to suggesting changes to the recommendations in the interim report. I trust that following your due consideration of individual observations and comments, adjustments to the recommendations might be considered. As I have not had the benefit of their respective detailed reviews, I find myself unable to comment on the fullness of the circumstances giving rise to recommendations 5 to 9. However, I do have some preliminary observations to make at this time.

Recommendation 5. *The Canadian Forces National Investigation Service should consult with Captain Poulin and, should he wish to pursue the matter, the Canadian Forces National Investigation Service should conduct an investigation into Captain Poulin's allegations that his personal information was leaked to the media.*

I am surprised to find a recommendation of this nature in the report as it is well outside the scope of your mandate. This recommendation pertains to a matter impacting on a specific military police operational decision of an investigative nature and is within the exclusive area of responsibility of the CFPM.

Recommendation 6. *The Deputy Provost Marshal Professional Standards should re-issue the official letter dismissing Captain Poulin's military police complaints, removing the reference to "vexatious".*

The Interim Military Police Policy on Complaints against and by Military Police of 13 October 1998 includes a definition of the term "vexatious". This interim complaints policy was implemented to ensure that appropriate institutional safeguards and oversight mechanisms were in effect pending the passage and implementation of the military police complaint process in Bill C-25. This process was approved by Steering Committee overseeing the implementation of the reports to the Minister of National Defence on critical changes to DND/CF including the Military Police. This Steering Committee, chaired by the Chief of Defence Staff, confirmed the appropriateness of the Interim Military Police Complaints process.

I recommend that your final report accept the definition of "vexatious" contained in the interim policy. I also believe that the final report should reflect the fact the interim policy was only implemented after being approved by the Steering Committee.

Recommendation 7. *The Chief of the Defence Staff should ensure appropriate directives are put into place to prevent actions by Canadian Forces members which constitute or which may be perceived by a reasonable person to constitute attempts to influence the course of Canadian Forces National Investigation Service investigations outside of the normal investigative process and the Canadian Forces Provost Marshal should be required to report all such actions in writing to the Chief of the Defence Staff who will, in turn, cause appropriate action to be taken and will inform the Canadian Forces Provost Marshal.*

Recommendation 8. *The Chief of the Defence Staff issues the appropriate directives to ensure that where incidents are referred to the Canadian Forces Provost Marshal for investigation that the referral comes from persons within the chain of command who are not identified as potential subjects of any allegations to be investigated.*

As these two recommendations are closely related, I am dealing with them together.

The report concludes that persons who are subjects of Military Police investigations should be precluded from referring matters for investigation to the CFPM or MP investigators in order to prevent perceptions of improper influence (Line 2696). This finding is based on the conclusion that a reasonable member of the public would perceive a "referral" as an attempt at improper influence that would undermine public confidence (Line 2695 refers).

Police routinely approach suspects to obtain their side of an allegation – often going to great lengths to get a statement from a suspect. Indeed, the current regulation (QR&O article 106.03) obliges investigators to collect all reasonable available evidence bearing on the guilt or innocence of the person. A volunteered statement is often a windfall.

Suspects must be free to present their side of the story, regardless of their rank or position in the service. In many cases such evidence will only be known to the suspects and they need to be able to take their concerns to the police in a timely fashion in order to refute unfounded allegations. The ability of accused persons/suspects to present their side to police is consistent with the presumption of innocence that underscores our justice system. In this respect, it may be argued that unfettered access to the police helps to ensure that the investigation will be conducted fairly.

Typically, the perception of undue influence is not related to a suspect or potential accused but rather to high-ranking individuals who might wish to halt the investigation for reasons such as embarrassment to the institution. The solution to "undue influence" lies in institutional safeguards, notably the independent Military Police Complaints Commission. This body and process ensures that police have an external mechanism that can be resorted to where they believe that inappropriate influence is being brought to bear. In the case of the military police, including the CFNIS, such safeguards are already contained in the NDA[1], the regulations and in the VCDS/CFPM Accountability Framework. These institutional safeguards are enhanced through access to independent dedicated legal advice within the Office of the Director of Military Prosecutions, through police training, and the Military Police Professional Code of Conduct.

In so far as these safeguards are concerned, I note that the interim report recognizes that the office of the CFPM was established, in part, to strive to ensure the conduct of investigations would not be susceptible to influence by other CF authorities. The independent, external oversight provided by the Military Police Complaints Commission and the Military Police Complaints process is the proper means whereby any perceived inappropriate or undue influence may be addressed.

Recommendation 9. *The Canadian Forces National Investigation Service should issue a further press release to correct the original media release and to clearly inform the Canadian public of the complete results of its investigation into the allegations against Lieutenant-General Leach including the fact that it did uncover evidence that individuals within the Canadian Forces chain of command had seen the memorandum submitted by Captain Poulin and were aware of its contents and that the Canadian Force National Investigation Service report recommended in its conclusions that the issue should be reviewed from an administrative perspective by the chain of command*

The interim report concludes that there was evidence found that " other individuals within the chain of command had seen the memorandum [of 9 July 96] and were aware of its contents" (Line 2862 refers). The Ombudsman terms the public statement to be "grossly misleading" (line 2869 refers). My review of the interim report suggests that only one officer, Major Lavoie, had first-hand knowledge of the memorandum. Although superior in rank to Captain Poulin, Major Lavoie was not in Captain Poulin's reporting/supervisory chain of command per se.

While Captain Poulin had indicated (Line 2770) that his two immediate supervisors (Major Tremblay and LCol Duchesneau) were aware of the memorandum, when interviewed by your investigators, neither was able to recall the memo or its contents.

It goes without saying that in a large military organization not every military superior officer will be in one's direct chain of command; everyone reports to someone higher in the chain who in turn reports to someone else higher still and so on - hence the "chain" analogy. This concept defines how command is exercised in virtually all military organizations in the world as well as how reports and information about individuals are brought to the attention of those who exercise senior leadership functions over them. In the context in which this issue arises, (alleged inaction on the part of then MGen Leach) and the focus of the media interest at the time, BGen Samson's explanation, which is summarized on page 98 of the interim report, does appear to be accurate. Moreover, while Captain Poulin was aware that Major Lavoie had seen the memorandum, he does not include him in his list of officers in the chain of command who had knowledge of it. This omission may well be significant.

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[1] See in particular sections 250.19, 250.34-250.53.

Sufficiency of Evidence

Line 1721 of the interim report correctly notes that pursuant to Ministerial Directives, the Office of the Ombudsman is not mandated to review police discretion or to determine whether Criminal Code or Code of Service Discipline charges are warranted against any individual.[2] I am concerned that this comment in the context of the paragraph as a whole might be perceived as implying that your Office concludes that charges could have been laid against LGen Leach. I recommend that this paragraph be re-worked to ensure such a perception does not arise.

Conclusion

As noted, I have not had the benefit of reviewing the observations and comments solicited from individual military police members. I believe it would be appropriate for this office to be provided the opportunity to review a follow-on draft report. This would assist in bringing resolution and closure to the multitude of complaints brought by Captain Poulin.

Sincerely,

D Cooper

D.A. Cooper
Colonel
Canadian Forces Provost Marshal

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[2] The aim of a criminal or service offence investigation is to gather evidence to prove or disprove the elements of an offence. Findings are derived from the individual military police officer's assessment of all the facts and it is the individual officer who must form reasonable and probable grounds to lay a charge. The conduct of a criminal/service offence investigation is focused on an alleged offence and the threshold on which findings are made is much higher than that of an administrative inquiry.

28 March 2001

IN CONFIDENCE

Me André Marin
DND/CF Ombudsman
Carriageway Building
55 Murray St., Suite 500
Ottawa, Ontario
K1N 5M3

Dear Me Marin:

Further to our brief meeting on March 5, 2001, this letter acknowledges receipt of your Interim Report [the "*Report*"] concerning my complaints against members of the senior command at *National Defence Headquarters* and the National Investigative Service for various acts of reprisals and personal harassment since June 1998 when the existence of my 1996 memorandum containing allegations of inappropriate behaviour against Colonel Serge Labbé became public. Having given the *Report* anxious consideration, I now wish to provide you with the following comments.

At the risk of appearing ungrateful and unappreciative of the efforts and resolve displayed by you and your staff in investigating this entire matter and in finding in my favour, I must nevertheless open by noting my profound disappointment and considerable regret with, not so much the contents of the *Report,* but by what the *Report* fails entirely to address, let alone remedy. To be clear, I am speaking of the overarching failure of the *Report* to acknowledge, even if only in timid terms, the personal and professional damages, injuries and mental suffering this entire, prolonged, and public affair has caused, and is still causing, me and my family. To a somewhat lesser extent, I am, of course, alluding to the lack of findings and overall conclusions by yourself, as the *Ombudsman.*

Given the asymmetry and severe imbalance, in terms of power, influence and authority, between me and the principals of my complaints, may I be so bold to remind you of the enormous stakes involved for me, right from the start. Armed with much naivety but possessing a sense of duty and a sense of honour honed in during my long association with the Canadian military, despite my status as a junior officer, I felt duty bound to bring, in 1996 allegations of misconduct by a very senior army officer to my then Commander, Lieutenant General Leach. With the power of hindsight, it is now obvious, to you and I, that, from the start, the high command never had any intention to act upon my allegations. Not surprisingly therefore, as soon as the report of my allegations became public in 1998, I not only became instantly the subject of controversy within and outside the *Department of National Defence* but, worse, I was clearly identified as the source of embarrassment for both the army and its two highest ranking officers: the *Commander of the Army* and the *Chief of the Defence Staff.*

Assuming, without deciding, that these two gentlemen have acted, since then, in a very professional, detached and objective fashion, and in accordance with the strictest dictates of the CF Code of Ethics and the Code of Military Discipline, taking, initiating or authorizing, directly or indirectly, no career action against me, the fact remains that the same cannot be said for the several of their subordinates who serve in the long chain of command extending down from the *Chief of the Defence Staff.* As you know several of these officers took offense with my actions and reacted in an adverse, if not hostile, fashion to the negative media reports about the high command. From then on, these officers, all senior to me in rank and authority, in their own collective or individual wisdom, decided to treat me as an outcast, a renegade, an unfaithful and disloyal officer. The documented defamatory and vilifying comments written by Lieutenant-Colonel Robertson to Colonel Labbé about me is but one certain and perfect example of this treatment.

In the process, I was maligned, ostracized and scarred for life. Through a thousand rebuffs, many of them subtle, most of them hushed and underhanded, and all of them independent of one another, my career suffered. My performance evaluation plummeted. My prospects for advancement vanished. To wit: the dramatic reduction in my performance evaluation reports since 1997[1]. Professional and regimental bonds, exchanges of camaraderie and manifestations of esprit de corps, forged through a 20-year career with my fellow officers, disappeared almost overnight. The message became overwhelmingly clear: I must cut short my career in the Canadian military. The impact was deeply felt. The damage to my career, to my professional reputation and status is now irreversible. All this, sadly, because in 1996 I decided to act upon the motto which I first learned while undergoing training at the *Royal Military College*: Truth, Duty, Valour and put my faith in the senior leaders of the Canadian military.

Further, I am further astounded to note that your *Report* is also totally silent about the seven substantiated complaints submitted by me under the *Privacy Act* which were held as valid by the *Privacy Commissioner of Canada.* These findings by the *Privacy Commissioner*, which have been in your possession for awhile, could and should have been incorporated in the *Report* if only because they result from the same set of circumstances and the same cast of characters and serve to corroborate the corrosive nature of the retaliatory actions taken by several senior members of the CF officers corps. They provide also outside objective evidence of the breath and depth to which some CF officers went to strike back against me. It goes without saying that my two complaints submitted under the *Access to Information Act*, which were each supported by the *Information Commissioner of Canada,* should also have merited an entry into the *Report*. Together, these complaints square the circle, indicating a systemic and wide-based pattern of harassment.

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[1] In 1996, I was ranked in the top quarter of all officers eligible for promotion to the rank of major. In 1998, my performance evaluation report stated that I was no longer ready for promotion and my ranking dropped to the second quarter of eligible officers. Since 1999, I am no longer rated as eligible for promotion.

Allow me also to note that in my considered opinion, the *Report* is seriously handicapped because it conveniently sidesteps the issue of remedy for my loss. While I appreciate the recommendation that the Chief of the Defence Staff should write me a Letter of Regret acknowledging the failure of the chain of command and promising corrective measures to prevent recurrence, this would effectively do little, if anything, to compensate or mitigate my very substantial loss of professional standing and advancement in my chosen calling or begin to indemnify my family or I for the pain and suffering, indignation and loss of my reputation suffered since 1998.

Since 1998, my family and I have had to endure successive months of stress and humiliation and, witness the whittling away of a once-promising military career. Our dreams and hope for the realization of my career goals and ambitions evaporated every passing month. Worse - much worse - silently, we had to watch and hear senior officers and senior military police officials directly involved in the allegations, and the subject of your investigation, unabashedly and consciously mobilize the CF Public Affairs apparatus to issue official denials of any wrongdoing on the part of the senior leadership. This added, in a not inconsiderable way, to my being further denigrated, repudiated and discredited.

As if this torture was not enough: allow me to remind you that in the intervening three years, I was changed jobs four times, some of them *ad hoc* in nature, while awaiting the completion of the investigation. For three years, I have felt totally abandoned by the system: DND, the C.F. and, with respect, the Ombudsman *per se*. That is why, I feel that the *Report* has let me down, way down and this even if I were certain to see the actuation of all the key recommendations contained in the *Report* as it now stands.

Ready and anxious to see closure on the entirety and totality of the matters covered in the *Report*, I trust and hope, however, that the Final Report will contain your very own findings, conclusions and recommendations. This may facilitate the discreet and confidential settlement of this matter with the CF authorities in a forthright manner. It may allow me also to retire quietly, but with dignity, from my chosen profession.

Yours truly,

B Poulin

Bruce Poulin